to file a Federal income tax return for said year under the provisions of Section 51 of the Revenue Act of 1928 and did not file a return for the said year.

(6) Wherefore, the petitioner prays that this Board may hear the proceeding and determine:

(a) That the Commissioner's notice of deficiency was not sent to the petitioner within the period prescribed by law.

(b) That the amount of $10,000.00 received from Unopco Corporation was not taxable income,

(c) That there is no deficiency or penalty due from the petitioner for the calendar year 1931, or

[fol. 6] (d) What is petitioner's income tax liability for said year.

(Signed) Arthur M. Kracke, Counsel for Petitioner,
209 So. La Salle Street, Chicago, Illinois.

Duly sworn to by Arthur G. Bogardus. Jurat omitted in printing.

[fol. 7] EXHIBIT "A" TO PETITION

Copy

Treasury Department,

Washington

Office of Commissioner of Internal Revenue

June 28, 1934.

Mr. Arthur G. Bogardus, 17 Overlook Terrace, Larchmont, New York.

SIR:

You are advised that the determination of your income tax liability for the year 1931 discloses a deficiency of $67.70 and a penalty of $16.93 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1928, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from

the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the [fol. 8] attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully, Guy T. Helvering, Commissioner, by
(Signed) Chas. T. Russell.

Enclosures: Statement. Form 870.

Statement

IT:AR:A-2
KVN-90D

In re Mr. Arthur G. Bogardus, 17 Overlook Terrace, Larchmont, New York

Income Tax Liability

Year	Income Tax Liability	Income Tax Assessed	Deficiency	Penalty
1931	$67.70	None	$67.70	$16.93

Information submitted to this office indicates that you received a cash distribution of $10,000.00 from the Universal Oil Products Company. This amount represents taxable income to you. Following is a synopsis of your return:

[fol. 9] Line 1—Salary		$250.00
Distribution		10,000.00
Line 3—Interest		136.00
Line 4—Interest		75.00
Line 11—Dividends		346.50
Total Income		$10,807.50
Less:		
Line 13—Interest Paid	$980.00	
Line 14—Taxes Paid	445.04	
Line 17—Contributions	33.00	1,458.04
Adjusted net income		$9,349.46

Computation of Tax

Adjusted net income		$9,349.46
Less:		
Dividends	$346.50	
Personal exemption and credit for dependents	3,900.00	4,246.50
Balance subject to normal tax		$5,102.96
Normal tax at 1½% on $4,000.00		$60.00
Normal tax at 3% on $1,102.96		33.09
Total		$93.09
Less:		
Earned income credit on $10,250.00 (Limited to 25% of normal tax on net income plus 25% of surtax on earned income)	$23.89	
Tax paid at source	1.50	25.39
Income tax liability		$67.70
[fol. 10] Income tax assessed		None
Deficiency		$67.70
25% penalty for delinquency		16.93
Total deficiency and penalty		$84.63

The ad valorem penalty of 25% has been asserted as you failed to file an income tax return within the time prescribed by law.

Before United States Board of Tax Appeals

[Title omitted]

Answer—Filed September 28, 1934

Comes now the respondent, by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, and for answer to the petition filed herein, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2.

[fol. 11] 3. Admits that the taxes in question are income taxes for the year 1931 in the sum of $67.70 plus a penalty of $16.93, totalling $84.63.

4. Denies that the Commissioner erred as alleged in paragraph 4 and each subparagraph thereof.

5(a). Admits the allegations contained in paragraph 5(a).

5(b) and (c). Denies the allegations contained in paragraphs 5(b) and 5(c).

6. denies generally all allegations in the petition not herein admitted.

Wherefore, it is prayed that petitioner's appeal be denied.

(Signed) Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue. Of Counsel: Arthur Carnduff, Special Attorney, Bureau of Internal Revenue.

AC/ES 9/27/34.

[fol. 12] Before United States Board of Tax Appeals

[Title omitted]

Motion to Consolidate—Filed September 30, 1935

Now comes the petitioner above named by his counsel, Merlin A. Muth, and moves as follows:

(1) That the following designated proceedings be consolidated with this proceeding for hearing:

Petitioner	Docket Number
Donald J. Bergman	75881
Maurice S. Beyt	75882
George A. Bockman	75879
Arthur G. Bogardus	77226
Macauley Carter	75880
Gustav Egloff	74917
William F. Hall	76228

Petitioner	Docket Number
Lyman C. Huff	74918
Grace Simpkinson, Executrix of the Estate of Robert M. Kerr, deceased	75875
Bernard G. Lenske	75878
Frank J. Mack	75877
E. M. Matson	75876
Edwin F. Nelson	75822

[fol. 13]

Robert M. Olsen, former Administrator of the Estate of Neal S. Olsen, deceased	76229
Jean Delattre-Seguy	75921
Jonathan L. Walker and Boston Safe Deposit and Trust Company of Boston, Massachusetts, Executors of the Estate of William H. Walker, deceased	76230
James V. Willett	75883

(2) That this proceeding and all of the foregoing designated proceedings be transferred from the circuit calendar at Chicago, Illinois, to the Washington calendar.

(3) That this proceeding and the foregoing designated proceedings be set down for hearing at Washington on November 7, 1935.

In support of this motion it is stated that similar or identical issues are involved in each of these proceedings and it would be of great convenience to the Board and to the petitioners to have the issues tried simultaneously and that the proceedings will be facilitated by hearing on the designated date at Washington.

(S.) Merlin A. Muth, Counsel for Petitioner, 33 North La Salle St., Suite 3000, Chicago, Illinois.

No Objection. (S.) Robert H. Jackson, Assistant General Counsel, for the Bureau of Internal Revenue.

[fol. 14] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 74,916,74,918, 75,822, 75,875-75,883, 75,921, 76,228-76,230, 77,226

JACQUE C. MORRELL, et al.,* Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Richard H. Wilmer, Esq., Merlin A. Muth, Esq., and L. G. Sutherland, C. P. A., for the Petitioners.

Wliliam E. Davis, Esq., and Stanley B. Anderson, Esq., for the Respondent.

Memorandum Findings of Fact and Opinion

These proceedings, consolidated for hearing, involve deficiencies in petitioners' income taxes for the calendar year 1931 as follows:

Docket No.	Petitioner	Deficiency
74916	Jacque C. Morrell	$1,881.34
74917	Gustav Egloff	19,098.82
74918	Lyman C. Huff	4,641.76
75822	Edwin F. Nelson	426.25

[fol. 15]

75875	Grace Simpkinson, Executrix of the Estate of Robert M. Kerr, deceased	3,645.82
75876	E. M. Matson	90.78
75877	Frank J. Mack	139.34
75878	Bernard G. Lenske	102.29

* Gustav Egloff; Lyman C. Huff; Edwin F. Nelson; Grace Simpkinson, Executrix of the Estate of Robert M. Kerr, deceased; E. M. Matson; Frank J. Mack; Bernard G. Lenske; George A. Bockman; Macauley Carter; Donald J. Bergman; Maurice S. Beyt; James V. Willett; Jean Delattre-Seguy; William F. Hall; Robert M. Olsen, former Administrator of the Estate of Neal S. Olsen, deceased; Jonathan L. Walker and Boston Safe Deposit and Trust Company, of Boston, Massachusetts, Executors of the Estate of William H. Walker, deceased; Arthur G. Bogardus.

Docket No.	Petitioner	Deficiency
75879	George A. Bockman	89.87
75880	Macauley Carter	412.47
75881	Donald J. Bergman	1,347.02
75882	Maurice S. Beyt	72.56
75883	James V. Willett	88.58
75921	Jean Delattre-Seguy	1,613.45
76228	William F. Hall	10,212.79
76229	Robert M. Olsen, former Administrator of the Estate of Neal S. Olsen, deceased	310.77
76230	Jonathan L. Walker and Boston Safe Deposit and Trust Co., of Boston, Mass., Executors of the Estate of William H. Walker, deceased	242.69
77226	Arthur G. Bogardus	67.70
	Penalty	16.93

The principal issue, which is common to all of the proceedings, is whether certain amounts distributed to the petitioners, or those whom they represent in these proceedings, were compensation or tax-free gifts. A further issue is raised as to the jurisdiction of the Board in the appeal of Robert M. Olsen, former Administrator of the Estate of *Neal S. Olsen, deceased, Docket No. 76,229.* The material facts have been stipulated in part.

[fol. 16] FINDINGS OF FACT

The amounts in controversy in these proceedings were a part of a large distribution made by the Unopco Corporation to the petitioners and others who had rendered services, either as employees or in some other capacity, to the Universal Oil Products Co. The distribution was made after a portion of the assets of the latter company, which were excluded from the sale, had been transferred to Unopco Corporation and all of the stock of Universal Oil Products Co. had been sold to outside interests. At the time of the sale the shares of stock of both corporations were owned by the same stockholders in the same proportion.

Universal Oil Products Co., hereinafter referred to as Universal, is a South Dakota corporation organized in 1914. Its only asset in the beginning was an application for a patent on a process for refining petroleum and manufacturing

gasoline. Since that time it has been engaged in the business of developing that and other patents which it subsequently acquired and in licensing them to various producers on a royalty basis. It received its first royalty payments of a few thousand dollars in 1922. From that time on its business improved rapidly. The process which it had developed was then gaining wide recognition in the industry and within the next few years many licenses for use of its patents and inventions were granted to oil refining companies throughout the country. By 1929 its royalties amounted to about $8,000,000 and by 1930 to about $9,000,000.

[fol. 17] In 1930 interested parties began to negotiate for the purchase of the stock of Universal and on January 2, 1931, an agreement was entered into for the sale of all of Universal stock to United Gasoline Corporation for $25,000,000. This agreement was consummated on January 6, 1931.

Prior to the sale of Universal stock and in contemplation of such a sale, the Unopco Corporation, hereinafter referred to as Unopco, had been organized for the purpose of acquiring some of Universal's assets which were to be excluded from the sale. Accordingly, and under the terms of the sale agreement of January 2, 1931, certain of the so-called "liquid assets" of Universal consisting of cash, securities, accounts receivable, etc., of a value of approximately $4,100,000 were transferred to Unopco. It was provided in the sale agreement that a part of the proceeds of the sale of Universal stock and a certain amount of the assets transferred to Unopco should be held as a "guarantee fund" for payment of Universal's unsettled liabilities.

Up to the time of the sale of Universal stock Unopco had never engaged in any business activities. Since that time its only business has been the investment and management of the assets acquired by it in that transaction. Under its new ownership Universal continued to carry on the same business, retaining a large part of its assets. All of the former stockholders of Universal became stockholders of Unopco with the same proportionate holdings. None of them thereafter held any stock in Universal or the purchasing corporation, United Gasoline Corporation.

A few days after the sale of Universal stock its former [fol. 18] stockholders, who were then the stockholders of Unopco, held a meeting at which it was proposed that they

show their appreciation for the loyalty and support of some of the employees of the company (Universal) by making them a "gift" or "honorarium." Such a resolution was formally adopted at a meeting of the board of directors of Unopco on January 9, 1931, and by the stockholders on January 10, 1931. The latter resolution was as follows:

"Resolved, that the following recommendations made by the Board of Directors to the stockholders of this Corporation in the meeting of the Board of Directors held on January 9, 1931, viz.:

That the sum of Six Hundred Seven Thousand Five Hundred Dollars ($607,500.) be appropriated, paid and distributed as a bonus to sixty-four (64) former and present employees, attorneys and experts of Universal Oil Products Company (the corporation of that name referred to in the meeting of this Corporation held on the fifth and sixth days of January, 1931) in recognition of the valuable and loyal services of said employees, attorneys and experts to said Universal Oil Products Company; such sum to be distributed among said sixty-four (64) employees, attorneys and experts in such amounts to each employee, attorney and expert as the Board of Directors of this corporation shall determine;

be and the same are hereby in all things approved; and

Resolved Further, that this Corporation do appropriate, [fol. 19] pay and distribute the said sum of Six Hundred Seven Thousand Five Hundred Dollars ($607,500.) as a bonus to sixty-four (64) former and present employees, attorneys and experts of said Universal Oil Products Company; in recognition of the valuable and loyal services of said employees, attorneys and experts to said Universal Oil Products Company; said sum to be distributed among said sixty-four (64) employees, attorneys and experts in such amounts to each employee, attorney and expert, as the Board of Directors of this Corporation shall determine."

Thereafter, a list of those who were to receive the payments authorized by the above resolution was prepared by the officers of Unopco. The payments ranged in amount from $100,000 to $500. The amounts of such distribution received by the above named petitioners, or those whom the petitioners represent, were as follows:

Jacque C. Morrell	$25,000
Gustav Egloff	100,000
Lyman C. Huff	40,000
Edwin F. Nelson	10,000
Robert M. Kerr	40,000
E. M. Matson	5,000
Frank J. Mack	5,000
Bernard G. Lenske	5,000
George A. Bockman	5,000
Macauley Carter	10,000
Donald J. Bergman	20,000
Maurice S. Beyt	5,000
James V. Willett	5,000
Jean Delattre-Seguy	25,000
[fol. 20] William F. Hall	50,000
Neal S. Olsen	10,000
William H. Walker	10,000
Arthur G. Bogardus	10,000

All of those to whom the payments were made were at that time, or had been, employees, attorneys, or experts of Universal, except one of the recipients who was the sister of an employee who had been killed in an accident.

All of the amounts distributed were paid by checks of Unopco which were either delivered in person or mailed out by the president of the corporation. In presenting the checks the president stated that the payments were gifts from the stockholders of the corporation and need not be reported in income tax returns.

None of the above named recipients was ever employed by Unopco or by any of the former stockholders of Universal.

It is stipulated that neither Unopco nor any of its stockholders, nor the stockholders of Universal was at any time under any legal or other obligation "to pay any of said employees, attorneys or experts, including petitioners, any salary, compensation or consideration of any kind."

Neither Unopco nor Universal nor United Gasoline Corporation, nor any of the stockholders of those companies ever made or claimed any deduction for Federal income tax purposes of the above payments made to the petitioners and others. In the books of Unopco the payments were charged to surplus account in January, 1931.

Neal S. Olsen, whose petition in these proceedings was filed [fol. 21] by Robert M. Olsen, former administrator, Docket No. 76,229, died on December 13, 1931. The administrator of his estate, Robert M. Olsen, the petitioner herein, was discharged as administrator and the estate closed prior to March 9, 1934, the date of the deficiency notice which was addressed to "N. S. Olsen." As administrator of the decedent's estate, Robert M. Olsen, on March 11, 1932, filed an income tax return for the decedent for the period January 1 to December 13, 1931. The deficiency notice which was addressed to the decedent Neal S. Olsen was received by the petitioner Robert M. Olsen who filed the petition herein.

SMITH: OPINION

In support of their contentions that the payments in question were gifts and not compensation, the petitioners rely upon Jones v. Commissioner, 31 Fed. (2d) 755; reversing 10 B. T. A. 202; Blair v. Rosseter, 33 Fed. (2d) 286; affirming 12 B. T. A. 254; Lunsford v. Commissioner, 62 Fed. (2d) 740; reversing 22 B. T. A. 881; and Cunningham v. Commissioner, 67 Fed. (2d) 205; reversing Board's unreported Memorandum Opinion. In Jones v. Commissioner, supra (C. C. A., 3rd Cir.), the court held that certain payments made by the former stockholders to the former officers and employees of two affiliated corporations which had just sold their assets to another corporation were not taxable to the recipients as compensation from the corporations but were gifts from the individual stockholders. The court distinguished Noel v. Parrott, 15 Fed. [fol. 22] (2d) 669, on the facts, pointing out that the payments in that case were made by the corporation and not by the stockholders and that the corporation claimed the deduction of the amounts in its income tax returns. The Board had taken the view that the payments were in effect made by the corporation since they had been agreed upon by the directors before the sale was made and the sale price as originally agreed upon had been increased to cover the payments.

Blair v. Rosseter, supra, involved a payment of $50,000 made by a corporation to its president "in recognition of his able and successful direction of the affairs of the company during the past ten years." The payment was designated in the corporate resolution as a "gift" and on the

evidence adduced was so determined by the Board and by the reviewing court. Although that case was decided specifically on questions of fact and did not lay down any general rule as to the taxability or nontaxability of payments of that character, its general import appears to be in conflict with the views of the Board and some of the courts as expressed in later cases. Particularly is this true with respect to the inference to be gained from the following language contained in the court's opinion and quoted by the petitioners in their brief in these proceedings:

> • • • On the other hand, the decision of the Board of Tax Appeals finds direct support in Jones v. Commissioner of Internal Revenue (C. C. A.) 31 F. (2d) 755, where it was held that a part of the proceeds of a sale of [fol. 23] stock distributed to the administrative staff of corporations, *without obligation on the part of the stockholders, or any consideration other than recognition of past faithful services, constituted a gift, and not taxable income.* (Italics supplied.)

In Lunsford v. Commissioner, supra, the court, although recognizing that taxable compensation might be received as a purely voluntary payment for past performed services, citing Old Colony Trust Co., et al. v. Commissioner, 279 U. S. 716; Noel v. Parrott, supra; Fisher v. Commissioner, 59 Fed. (2d) 192, and other cases, held that the payment there in question was not of that character but was a "gift." "On the other hand," the court said in its opinion, "voluntary payments made to employees without any obligation to do so, or in consideration of past services already compensated for by salary, have been held to be gifts, and not taxable income to the payee." Citing Jones v. Commissioner, supra; Blair v. Rosseter, supra. The court pointed out, however, that the recipient was not employed by and had never performed any services for the corporation making the payment except that he was instrumental in bringing about the sale of the corporation's assets to another corporation of which he was an officer.

In Cunningham v. Commissioner, supra, the retiring president of a corporation whose stock had recently changed hands was paid $15,000, the amount of his yearly salary, as an hororarium "in appreciation of Mr. Cunningham's excellent guidance of this Corporation through times

[fol. 24] of difficulty and depression." The court held, reversing the decision of the Board, that the amount was a gift and was not taxable income to the recipient. In its opinion, the court said:

* * * The company was under no obligation to pay him. He had performed no service other than the duties of his office, for which he had been paid. The money was "awarded" to him; it was called an "honorarium," and that word, in common understanding, means voluntary reward for that for which no remuneration could be collected by law. It is clear to us that the money was a gift, a voluntary honorarium, and was freely given without any legal liability existing to necessitate such payment. It was so treated by the board of directors, and their having their stockholders ratify their action evidences the board's view that their gift of the stockholders' money should have the latter's approval.

It does not follow because a corporation is not under any legal obligation to pay an amount which it does pay to an officer or an employee or one who has rendered services that the amount is not compensation but a tax-free gift. The Supreme Court so stated in Old Colony Trust Co., et el. v. Commissioner, supra. The court there said:

Nor can it be argued that the payment of the tax in No. 130 was a gift. The payment for services, even though en-
[fol. 25] tirely voluntary, was nevertheless compensation within the statute. This is shown by the case of Noel v. Parrott (C. C. A.) 15 F. (2d) 669. * * *

The facts in the instant case are similar to those in Noel v. Parrott, supra. There, a corporation in anticipation of a sale of all of its assets or stock voted a "gratuitous appropriation" to be distributed to certain of its officers and employees. The Board held, 1 B. T. A. 1, that the amount of $35,000 so distributed to the company's superintendent was taxable income to him and was not a gift. The Board's decision was affirmed by the Circuit Court of Appeals for the Fourth Circuit. The court said:

* * * This negatives the idea that a gift was intended; for the distribution was to be made to those who had rendered services to the company; i. e., to those from whom the company had received a consideration in the past. * * *

* * * * * * *

When we view the resolutions of July 14, 1919, and the efforts to sell the stock or physical properties of the corporation in connection with what was done upon the sale to Atwater & Company (and, of course, this is the proper way to view the facts), it is apparent that the resolutions directing distribution to the officers and employees named were passed in anticipation of a sale of either the stock or the physical properties of the corporation, and were intended, not to make a gift to the officers and employees [fol. 26] named, but to grant them additional compensation for services theretofore rendered as well as compensation for bringing about the sale and for the loss of their positions expected to result therefrom. When the sale was actually made the terms of sale were so fixed that the officers and employees named in the resolution would receive the compensation therein provided. The payment to them, therefore was not without consideration, as in case of a gift. The consideration was their previous service to the company, the relinquishment of their positions, the sale of their stock, and the efforts which they, or some of them, put forth to bring about the sale of all of the stock of the corporation. * * *

In Weagant v. Bowers (C. C. A., 2nd Cir.), 57 Fed. (2d) 679, the court said that:

* * * There is authority for the proposition that it is not enough to show that a payer was under no legal duty to pay and that "additional compensation" paid for past services may constitute taxable income. * * *

Citing:

Noel v. Parrott, supra; Old Colony Trust Co., et al. v. Commissioner, supra, and other cases.

Bass v. Hawley (C. C. A., 5th Cir.), 62 Fed. (2d) 721, one of the cases relied upon by the respondent, also in- [fol. 27] volved facts similar to those in the instant proceedings. There, the corporation, an operating company, which the taxpayer had served as auditor for a number of years, changed ownership through the sale of all of its stock by a holding company and the holding company voted to distribute a part of the proceeds of the sale to certain employees of the operating company. The distribution

was referred to by the directors and stockholders as "additional compensation * * * in recognition of the long and faithful service" and "bonuses to employees." The taxpayer there received $32,500 of such distribution. In holding that the amount constituted taxable income the court said:

The Board of Tax Appeals and the Court of Claims have reached opposite conclusions as to the taxability of this distribution. Barnes v. Commissioner, 17 B. T. A. 1002; *Schumacher* v. *United States* (Ct. Cl.) 55 F. (2d) 1007. Hawley relies strongly on Jones v. Commissioner (C. C. A.) 31 F. (2d) 755, and Blair Commissioner v. Rosseter (C. C. A.) 33 F. (2d) 286. Each of these cases in holding payments to employees to be nontaxable gifts relies on the fact that there was no obligation to pay and the payments were over and above the wages and salaries due. The controlling importance of that fact has since been denied by the Supreme Court in Old Colony Trust Co. v. Commissioner, 279 U. S. at page 730, * * *

* * * Section 213 of the Revenue Act of 1926 (26 [fol. 28] U. S. C. A. § 954) here applicable includes in gross income to be taxed "gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid." It excludes property acquired by "gift, bequest, devise or inheritance." The intent is that all receipts in whatever form that come because of labor and service, whether payment could be compelled or not, shall be taxed as arising from labor. That only is a gift which is purely such, not intended as a return of value or made because of any intent to repay another what is his due, but bestowed only because of personal affection or regard or pity, or from general motives of philanthropy or charity. Those payments made because of past services, but over and above what was contracted and compellable to be paid, have been called additional compensation and bonuses, and are taxable income to the recipient. From the standpoint of the payer also they are recognized as disbursements for wages or salaries, and when paid in the conduct of a regular business may be deducted as an expense thereof. See Regulations 69, art. 108. * * *

William C. Barnes, 17 B. T. A. 1002, referred to in the above quotation, was later overruled by the Board in

Thomas M. Schumacher, 27 B. T. A. 895, in which we followed Schumacher v. United States, 55 Fed. (2d) 1007.

The petitioners stress the facts that none of the beneficiaries of the distribution here was or or ever had been an [fol. 29] employee of Unopco, the company making the distribution, and that the payments were authorized and made by that company after the sale of Universal stock to outside interests. It is apparent, however, that in making the distribution Unopco recognized and assumed the obligations of universal to those officers and employees. The resolutions of the board of directors and stockholders of Unopco authorized the payments "in recognition of the valuable and loyal services of said employees, attorneys and experts to said Universal Oil Products Company." Unopco was to all intents and purposes a continuation of Universal under another name. It had the same stockholders with the same proportionate holdings. It was organized in anticipation of the sale of Universal stock to receive and hold the so-called "liquid assets" of Universal which were to be excluded from the sale. The situation was similar to that in Bass v. Hawley, supra; Schumacher v. United States, supra; and Thomas M. Schumacher, supra, with respect to which the Court of Claims in Schumacher v. United States, supra, said:

> It is immaterial that the payment received by the plaintiff was made by the holding company rather than by the company for which he had rendered services. The entire capital stock of the railroad company was owned by the holding company. The economic interests of the two companies were identical. The purchase price received from the sale of the railroad company went to the holding company. That the money received by the plaintiff was not paid directly by the railroad company but was paid by the [fol. 30] stockholder's committee of the holding company does not change the essential character of the transaction, and make a gift out of what was intended to be, and in fact was, additional compensation for services rendered.

The initial step in bringing about the payments here in controversy was described by the attorney for Universal who participated in the transaction, as follows:

> A. Some three days, possibly, after the sale had been consummated on January 6th, the old stockholders of Uni-

versal met around the table and discussed various things, the investment and re-investment of monies in Unopco, and the general policy to be pursued. And in the course of that conference Mr. H. J. Halle, who was President of Universal Oil Products Company, and became President of Unopco Corporation, said that we had reason to congratulate ourselves on our very great good fortune in this company which started with nothing, to all intents and purposes, and had been built up in this phenomenal way; and we had all profited very largely; and during these years while we were struggling and moving forward, we had had the loyal support of a number of employees most particularly, and he thought it would be a nice and generous thing for us to show our appreciation and to remember them in the form of a gift or honorarium; * * *

Soon afterwards, the formal resolution authorizing the [fol. 31] payments "as a bonus to sixty-four (64) former and present employees, attorneys and experts of said Universal Oil Products Company; in recognition of the valuable and loyal services of said employees, attorneys and experts to said Universal Oil Products Company" was passed by the directors and stockholders of Unopco. The use of the word "bonus" and the phrase "in recognition of the valuable and loyal services" strongly indicates that the payments were intended as compensation for past services rendered to Universal. See Bass v. Hawley, supra; Schumacher v. United States, supra. We do not think that the inference to be drawn from the formal resolution is changed by the statement made to the recipients by the president of Unopco in delivering the checks that they were "gifts" and need not be reported in income tax returns. As the above cited cases illustrate, what constitutes a tax-free gift within the meaning of the revenue statutes is often difficult to determine. Very reasonably the corporation's president, in misconception of the law, might have considered the bonuses or additional compensation as gifts. In determining whether they were in fact and in law gifts or compensation we must look to all of the attending circumstances. Noel v. Parrott, supra; Bass v. Hawley, supra; and Fisher v. Commissioner, supra.

Statements made by the parties at the time of the transaction may tend to show their intentions but are not always

the most reliable criteria. In Levey v. Helvering, 68 Fed. (2d) 401; 62 App. D. C. 354; affirming 26 B. T. A. 889, the court held that an amount paid by a corporation to one of its officers, although described as a gift in the corporate [fol. 32] resolution, was nevertheless taxable as additional compensation. We held in C. B. Wilcox, 27 B. T. A. 580, that a payment of $50,000 made to an officer of a corporation out of the proceeds of the sale of the corporation's stock, although designated a gift by the president of the selling corporation, was nevertheless compensation taxable to the recipient.

The petitioners call attention to the fact that no claim for a deduction of the payments was made in the income tax returns of any of the corporations involved or the individual stockholders. A similar situation existed in Bass v. Hawley, supra, with respect to which the court said:

> Against this conclusion is put forward the fact that neither the Holding Company nor the committee claimed a deduction for the payment in their tax returns. It is true that a payment which is a gift as respects the payer, and so not deductible, will likely be a gift in the hands of the recipient and not taxable, but it is not true that because a payment may not have been taken as a deduction by the payer that it cannot be taxed as income to the recipient. The former may have overlooked or waived his right to deduct, which would not relieve the latter from his duty to pay taxes. Or it may happen that the payer was not, when the obligation was asumed and the payment made, engaged in business and so not within the statute allowing the deduction. This seems probable in this case.

[fol. 33] From a careful consideration of all the evidence before us, we conclude that the payments made by Unopco to the petitioners and others were additional compensation in consideration of services rendered to Universal and were not tax-free gifts.

At the hearing before the Board, counsel for the petitioners moved the dismissal of the petition of Robert M. Olsen, former administrator of the Estate of Neal S. Olsen, deceased, Docket No. 76,229, for want of jurisdiction. The contention is made that the Board is without jurisdiction because the petition was filed from a deficiency notice sent to the decedent, Neal S. Olsen, and that the petition was filed

by the former administrator of the estate who had been discharged prior to the mailing of the deficiency notice. The contention, we think, is without merit. Admittedly the deficiency notice was received by the petitioner who had administered the decedent's estate and a petition to review the decedent's tax liability was timely filed by him. These facts are sufficient to confer jurisdiction of the proceeding on the Board. See Haag v. Commissioner, 59 Fed. (2d) 516; McCarthy v. Commissioner, 80 Fed. (2d) 618; Bankers Trust Co., Trustee, 24 B. T. A. 10; Waldemar R. Helmholz, Executor, 28 B. T. A. 165; Edwin W. Eisendrath, 28 B. T. A. 744. In Haag v. Commissioner, supra, the deficiency notice had been sent to the executrix after the estate had been closed and the executrix dismissed. The executrix received the notice and filed a petition with the Board. In holding that the Board had jurisdiction the court said, citing Whit-
[fol. 34] mer v. Lucas, 53 Fed. (2d) 1006; Commissioner v. New York Trust Co., et al., 54 Fed. (2d) 463; Burnet v. San Joaquin Fruit & Investment Co., 52 Fed. (2d) 123; American Auto Trimming Co. v. Lucas, 37 Fed. (2d) 801, that:

> • • • These cases hold that although the notice was not directed to the proper party, nevertheless if it appeared that the proper party had received the notice or that the party who succeeded to the title of the party filing the return had received the notice, it was sufficient.

The motion of counsel for the petitioners to dismiss the petition in Docket No. 76,229 is denied.

Judgments will be entered for the respondent.

Enter:
Entered April 30, 1936.
(Seal.)

[fol. 35] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON

Docket No. 77,226

ARTHUR G. BOGARDUS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the determination of the Board, as set forth in its Memorandum Findings of Fact and Opinion entered April 30, 1936, it is

Ordered and Decided: That there is a deficiency of $67.70, plus a penalty of $16.93, for the calendar year 1931.

Enter:

Entered April 30, 1936.

(Signed) Eugene Black, Member.

[fol. 36] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT

[Title omitted]

PETITION FOR REVIEW—Filed July 27, 1936

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes Arthur G. Bogardus, the petitioner herein, a citizen of the United States and of the State of New York and a resident of Larchmont, New York, and in support of this his petition filed in pursuance of the provisions of Section 1001 of the Revenue Act of 1926, as amended, for the review of the decision and order, hereinafter described, of the United States Board of Tax Appeals rendered on April 30, 1936, respectfully shows to this Honorable Court as follows:

I. Statement of the Nature of the Controversy

1. On June 28, 1934, the Commissioner of Internal Revenue, the respondent herein, mailed to the petitioner by reg-

[fol. 37] istered mail a notice of the determination of an asserted deficiency in income tax in the amount of $67.70 plus penalty of $16.93 for alleged failure to file on time his income tax return claimed by the respondent to be due from the petitioner for the calendar year 1931 under and by virtue of the provisions of the Revenue Act of 1928. On August 21, 1934, the petitioner duly filed with the United States Board of Tax Appeals (hereinafter called the Board) a petition for the redetermination of said asserted deficiency.

2. Said asserted deficiency in income tax claimed by the respondent to be due from the petitioner resulted from the inclusion in gross income for the calendar year 1931 under Section 22 (a) of the Revenue Act of 1928 of the amount of $10,000 received from Unopco Corporation (hereinafter called Unopco).

3. The petitioner was an employee of Universal Oil Products Company (hereinafter called Universal). For the year 1930, he had been paid in full by Universal his agreed compensation and also the usual bonus paid by Universal as additional compensation. On January 6, 1931, all the stockholders of Universal, pursuant to a purchase agreement dated as of January 2, 1931, sold all of their stock in Universal to United Gasoline Corporation (hereinafter called United). Those stockholders became stockholders in Unopco (a corporation to which certain assets of Universal were transferred under conditions set forth in the aforesaid purchase agreement) in substantially the same proportions in which they had been stockholders in Universal and ceased [fol. 38] entirely to be stockholders in Universal and were never stockholders in United and had no further interest in either of said corporations. The petitioner has never been an employee of Unopco or of any of its stockholders, and neither Unopco nor any of its stockholders were ever under any obligation to pay anything to the petitioner.

4. After the aforesaid sale had been consummated the stockholders of Unopco voluntarily determined to make payments of money to certain of the present and former employees, experts and attorneys of Universal, without any obligation of any kind whatsoever to make such payments. That determination was carried into effect by virtue of resolutions adopted by the Board of Directors and by the stockholders of Unopco in their respective meetings held on

January 9 and 10, 1931. The petitioner was among those selected as recipients, receiving from Unopco $10,000. The petitioner, along with other recipients, was advised by Unopco that the amount paid to him was a gift and was not taxable income. He, as well as Universal, Unopco and the latter's stockholders, treated it accordingly, and neither Universal, Unopco nor the latter's stockholders made any deductions in their income tax returns on account of such payment. The respondent, however, determined that the amount so received constituted additional compensation to be included in his taxable income for the calendar year 1931.

5. The petitioner contended in his appeal before the Board that the aforesaid amount was not taxable income under Section 22 (a) of the Revenue Act of 1928, but con- [fol. 39] stituted a gift and, under Section 22 (b) (3) of the Revenue Act of 1928, was not taxable income.

6. The respondent contended that the amount so received constituted additional compensation and thus was taxable income.

7. On April 30, 1936, the Board promulgated its memorandum findings of fact and opinion whereby it decided that the amount of $10,000 received by the petitioner from Unopco constituted additional compensation and was taxable income within the meaning of Section 22 (a) of the Revenue Act of 1928.

8. On April 30, 1936, the Board rendered, and entered in its records, a decision and order in accordance with its said opinion whereby it determined that the amount of the deficiency in income tax due from the petitioner for the calendar year 1931 was $67.70 plus penalty of $16.93.

II. Declaration of the Court in Which the Review is Sought

The petitioner, feeling aggrieved by said decision and order, hereby petitions for the review thereof by the United States Circuit Court of Appeals for the Second Circuit, in which Circuit is located the office of the Collector of Internal Revenue to which was made the return in respect of which the liability involved in this appeal arises.

III. Assignment of Errors

The petitioner as a basis for the review of said decision and order makes the following assignment of errors:

[fol. 40] 1. The Board erred in that it did not decide and hold that the amount of $10,000 received by the petitioner from Unopco in 1931 constituted a gift.

2. The Board erred in deciding and holding that the amount of $10,000 received by the petitioner from Unopco in 1931 constituted taxable income for the calendar year 1931 as additional compensation.

3. The Board erred in not deciding and holding that the amount of $10,000 received by the petitioner from Unopco in 1931 under the facts and circumstances and the law applicable thereto constituted a gift that was non-taxable under Section 22 (b) (3) of the Revenue Act of 1928.

4. The Board erred in deciding and holding that the amount of $10,000 received by the petitioner from Unopco in 1931 under the facts and circumstances and the law applicable thereto did not constitute a gift that was non-taxable under Section 22 (b) (3) of the Revenue Act of 1928.

5. The Board erred in deciding and holding that the amount of $10,000 received by the petitioner from Unopco in 1931 under the facts and circumstances and the law applicable thereto, constituted taxable income of the petitioner for the calendar year 1931 under Section 22 (a) of the Revenue Act of 1928.

6. The Board erred in not deciding and holding that the amount of $10,000 received by petitioner from Unopco in 1931 under the facts and circumstances and the law applicable thereto did not constitute taxable income of the petitioner for the calendar year 1931, under Section 22 (a) of the Revenue Act of 1928.

[fol. 41] 7. The Board erred in not deciding and holding that there was no deficiency due by the petitioner in respect to his income tax for the calendar year 1931.

8. The Board erred in deciding and holding that there was a deficiency in income tax of the petitioner for the cal-

endar year 1931 in the amount of $67.70 plus penalty of $16.93.

9. The Board erred in that its decision and order is not supported by the evidence.

10. The Board erred in deciding and holding contrary to the evidence.

11. The Board erred in deciding and holding contrary to the law.

12. The Board erred in its decision for other reasons apparent of record.

Wherefore, your petitioner prays that said decision and order of the Board be reviewed and reversed by the United States Circuit Court of Appeals for the Second Circuit in accordance with law and for such other and further relief as said Court may deem meet and proper in the premises.

Arthur G. Bogardus, Petitioner, by (S.) Richard H. Wilmer, Attorney of Record for Petitioner. (S.) Richard H. Wilmer, Merlin A. Muth, L. G. Sutherland, Attorneys for Petitioner.

[fol. 42] *Duly sworn to by Richard H. Wilmer. Jurat omitted in printing.*

[fol. 43] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

NOTICE OF FILING PETITION FOR REVIEW—Filed July 27, 1936

To Guy T. Helvering, Esq., Commissioner of Internal Revenue, Washington, D. C.

SIR:

Please Take Notice that on the 27th day of July, 1936, Arthur G. Bogardus, the petitioner in the above-entitled proceeding, filed, with the Clerk of the United States Board of Tax Appeals, the petition of said petitioner, a copy of which is annexed hereto, for the review by the United States Circuit Court of Appeals for the Second Circuit of the

[fol. 44] decision and order of said Board rendered and entered in its records in the above-entitled proceeding on April 30, 1936.

Washington, D. C., July 27, 1936.

(S.) Richard H. Wilmer, Merlin A. Muth, L. G. Sutherland, Attorneys for Petitioner, Arthur G. Bogardus.

Admission of Service

Receipt of the foregoing notice of filing of petition for review and service of a copy of the petition therein mentioned is acknowledged this 27th day of July, 1936.

(S.) Herman Oliphant, General Counsel for the Department of the Treasury, Attorney for the Respondent.

[fol. 45] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

Statement of the Evidence—Filed September 16, 1936

The above-entitled cause came on for hearing before the Honorable Charles P. Smith, Member of the United States Board of Tax Appeals, on the 7th day of November, 1935.

STIPULATION

Prior to the introduction of testimony it was stipulated between counsel for the petitioner and the respondent that copies of the 60-day deficiency letter from the Commissioner attached to the petition should be received in evidence with equal force as if the original letter was introduced. Said 60-day deficiency letter is printed elsewhere in the record and is incorporated by reference herein. Counsel for the petitioner then presented and there was received as part of the record the stipulation of facts, including Exhibits A to K thereof, which had been signed by counsel for the petitioner and the respondent and is printed elsewhere in this record and is incorporated by [fol. 46] reference herein. While conceding the correctness of the statements made in the stipulation and the fact that

the copies of certain letters comprising Exhibits B to K inclusive to said stipulation were true copies thereof, counsel for the respondent objected to the introduction of said letters and to the statements made in the stipulation with regard to what H. J. Halle said to recipients of payments concerning the nature of the payments on the ground of irrelevancy and immateriality and as being in conflict with the express language of the resolutions authorizing such payments. Such objections were overruled and exceptions were noted.

Counsel for the petitioner offered and there were received in evidence the Petitioner's Exhibits Nos. 1, 2 and 3 annexed hereto as part of this Statement of Evidence. Counsel for the respondent, while conceding the correctness of the contents thereof, objected to the introduction of the Petitioner's Exhibits Nos. 1 and 2 on the ground that they were irrelevant and immaterial; his objection was overruled and exception noted.

The petitioner, to maintain the issues on his behalf, introduced the following testimony:

ALEXANDER F. REICHMANN, being first duly sworn, testified that he was a resident of Chicago, Illinois, a member of the bar of that state, and a member of the firm of Judah, Reichmann, Trumbull, Cox & Stern; that he was associated in Universal Oil Products Company (hereinafter called [fol. 47] Universal) from the beginning of its organization and had helped organize it, keeping in very close touch with it up to the time of the sale in 1931; that in 1914 Universal, then known as National Hydro-carbon Company, upon exercise of an option given in 1913, received the assignment of a certain gasoline cracking patent application then pending. The patent was finally issued in January, 1915. Upon the advancing of large amounts of money to Universal work was immediately begun to develop the gasoline cracking process under this patent, such preliminary experimental work running from 1915 to approximately 1922. In 1919 Universal entered into its first license contract. The purpose of Universal was to develop the process to its ultimate conclusion of efficiency and then to establish a licensing system in consideration of royalties to be paid. In 1922 the first royalty payment of a few thou-

sand dollars was received. From then on the process had been developed and the appliances and apparatus with which to utilize the process had been developed to such an extent that it obtained universal recognition of the oil refining industry, resulting in the making of a great many license contracts. From 1922, when only a few thousand dollars were obtained in the way of royalties, the growth of Universal was literally phenomenal. Many license contracts were entered into. By 1929 the royalties aggregated in the neighborhood of $8,000,000 and by 1930 over $9,000,000. In 1930 interested parties began to negotiate for the purchase of the stock of Universal, resulting in a purchase agreement entered into on January 2, 1931. Under the pur-
[fol. 48] chase agreement the stockholders of Universal and those having certain contractual relations with Universal by which they were to receive percentages of profits sold all their stock and interests, respectively, in Universal for approximately $25,000,000, retiring completely from Universal, and in addition to that received all the stock of Unopco Corporation (hereinafter called Unopco), into which company Universal transferred certain assets of a value of more than $4,000,000 in accounts receivable, bills receivable, money, and securities and other property. Unopco had been organized a year or two before in anticipation of a possible sale which was never consummated, but Unopco had been kept alive so that it was still available when this new agreement was entered into. All of the stock of Universal was sold to United Gasoline Corporation (hereinafter called United). The above-described assets of Universal were transferred to Unopco before the sale of the stock of Universal was consummated, and all the stockholders of Universal became stockholders of Unopco in substantially the same proportion that they had owned stock in Universal. The witness had participated in the drafting of and negotiations for the purchase agreement and had participated in every discussion in connection therewith. The purchase agreement dated as of January 2, 1931, was carried out in all its details.

The sale of the stock was consummated on January 6, 1931, and some three days thereafter the old stocholders of Universal "met around the table and discussed various things, the investment and re-investment of monies in Unopco, and the general policy to be pursued." In the
[fol. 49] course of that conference Mr. H. J. Halle, who

was President of Universal and had become President of Unopco, said, to use the witness's words, that "we had reason to congratulate ourselves on our very great good fortune in this company which started with nothing, to all intents and purposes, and had been built up in this phenomenal way; and we had all profited very largely; and during these years while we were struggling and moving forward, we had had the loyal support of a number of employees most particularly, and he thought it would be a nice and generous thing for us to show our appreciation and to remember them in the form of a gift or honorarium; and he suggested that that be considered; and all of the stockholders acquiesced and were glad to do it; and the result was that it was understood that we would come forward and make these presents or gifts to these employees that were to be slated for it." Counsel for the respondent moved that the testimony above quoted be stricken; his motion was overruled and exception was noted.

The witness further testified that the matter had never been discussed among the old stockholders of Universal directly or indirectly and the first time it was brought up for consideration was when Mr. Halle mentioned it at the above-described meeting, and that the matter had never been discussed with United or any of its officers. A similar motion was made by counsel for the respondent, was overruled and exception was noted.

After certain resolutions by the Board of Directors and [fol. 50] stockholders of Unopco had been adopted [on January 9, 1931, and January 10, 1931, respectively] the witness, along with officers of Unopco, discussed the matter and prepared a list of recipients and amounts to be paid to each. Among the recipients were Mr. Hall, a patent attorney, who had been attorney for Universal for some time; Mr. Mond, a local patent solicitor who had worked for Universal a number of years; Mr. Walker, an expert who had been called in from time to time in consultation and who had given testimony in cases relative to patent infringements; Mr. McAdams and Mr. Weber, also experts like Mr. Walker; Mr. Off, also an expert, who had not had anything to do with Universal in any way since approximately 1922; Mr. Murray, in the same general capacity as Mr. Off, who likewise had not done any work for Universal since about 1923; Mr. Sims, who had not been employed by Universal since 1924 or 1925; Mr. Pollock, a mechanical

engineer, and to some extent a chemical engineer, who had been employed during the development stage of the patented process and its apparatus, but who had ceased his connection with Universal in about 1922; Messrs. Bishop, Davis and Taylor, who had been employed in California in connection with certain operations connected with the early development of the process and had testified in an infringement suit in California [out of employment of Universal since about 1922, see Petitioner's Exhibit No. 3]; and Clara Prohaski, who was the sister of an employee of Universal who had helped in the installation and operation of the furnace unit installed by Universal at Wood River, Missouri. While operating that unit there was an explosion [fol. 51] and the employee was killed. Universal had paid his relatives certain money, "and then when this list was gotten up an additional $5,000 was paid to the sister of this young man."

The witness was present in Chicago when Mr. Halle gave out the first checks, and a large part of the checks. The selected employees of Universal were called in one by one and Mr. Halle told them in substance that the check was a gift from Unopco or the old stockholders of Universal as a mark of appreciation for their loyalty and that, it being a gift, the payment was tax free and they would not be required to make any income tax return on account of it. None of the recipients were stockholders, past or present, of Universal or of United, nor were any of them officers or directors, past or present, of Universal or United, nor were any of them stockholders, officers or directors, past or present, of Unopco. None of the recipients was present at the directors' or the stockholders' meetings of Unopco at which the resolutions directing payment were adopted. None of the recipients was instrumental in procuring the sale of the stock in Universal to United. There were no understandings or agreements between United and the vendors of Universal stock outside of the purchase agreement of January 2, 1931.

The witness further testified that in October, 1933, there was a meeting in New York of the representatives of the old stockholders of Universal and of United and of certain of the stockholders in United, witness representing old stockholders of Universal and present stockholders of Unopco. That meeting was called to discuss the income

tax matters of Universal covering the years approximately [fol. 52] 1923 to 1931, inclusive, which were then open before the Bureau of Internal Revenue. A tentative agreement had previously been arrived at with the Bureau. At the conference the question was raised whether or not Universal, in settling its tax liability with the Bureau could avail itself as a deduction of the aggregate payments that had been made in January, 1931, by Unopco to certain selected employees of Universal. It was agreed by all that no such deduction properly could be made, and none was ever made. On questions from the Member of the Board the witness testified that the so-called liquid assets of Universal were transferred to Unopco on January 5, 1931, before the sale of stock was consummated. The capital stock of Unopco was $100,000, the same amount as the capital stock of Universal. All the old stockholders of Universal received stock in Unopco; Mr. Frank L. Belknap and witness at the beginning of the enterprise in 1914 had a contract with Universal whereby they were to be paid 10% of its earnings. Mr. Belknap also had a small amount of stock. In distributing stock in Unopco, 10% thereof was distributed to the witness and Mr. Belknap in recognition of their rights and the balance was distributed to the old stockholders of Universal in the same proportion in which they had held stock in Universal.

On cross examination the witness testified that all of the recipients were or had been employed in one capacity or another by Universal, the lawyers and experts being under retainers in isolated instances. They had been paid for their services to Universal. Unopco was used for the [fol. 53] purpose of taking certain liquid assets out of Universal and being held by Unopco subject to the wishes of practically the same body of stockholders that had made up the stockholders of Universal. Monies which were distributed to the recipients came out of the liquid assets that were transferred from Universal to Unopco. The sale of the stock in Universal by the holders thereof was conditioned, among other things, upon these assets being taken out of Universal and put in Unopco. There were no other resolutions of the Board of Directors or stockholders of Unopco with respect to distributions of amounts to the recipients except those referred to in the stipulation of facts filed in this case and referred to above.

R. W. JEFFERSON, being first duly sworn, testified that he was a resident of Lakewood, Illinois, was a public accountant associated with the firm of Price, Waterhouse & Company in its Chicago office; that he had dealt with the tax-matters of Universal from about 1922 and was acquainted with the different transactions from 1922 through the year 1931 insofar as tax matters were concerned. Counsel for the respondent and counsel for the petitioner stipulated that Universal had sufficiently large income in the year 1930 so that if the full amount of the payments that were made in 1931 to the past and present employees, experts and attorneys of Universal had been deducted from the net taxable income of Universal for 1930 there still would have been an excess of income subject to taxation, and similarity for the year 1931.

[fol. 54] The witness then further testified that he was generally familiar with the income tax matters of the old stockholders of Universal and that they had made enormous profits as the result of the sale of their stock in Universal. Counsel for the respondent and counsel for the petitioner then stipulated that the old stockholders of Universal for 1930 and 1931 had income which was subject to tax and that if the amounts which were distributed to the petitioner and other recipients had been available to them for deduction in 1930 or 1931 it would have created a saving to them in respect to their income taxes for either of those years.

The witness further testified that he was familiar with the affairs of Unopco in 1931 and thereafter. The value of the assets turned over to Unopco by Universal under the purchase agreement of January 2, 1931, was about $4,100,000, and after the payments made to the petitioner and other recipients had been made Unopco had assets of a value of approximately $3,500,000.

The witness was not cross examined.

The respondent called no witnesses in rebuttal.

Thereupon counsel for both petitioner and respondent stated that they had no further or other evidence to present and rested their case.

The foregoing is the substance of all the evidence adduced at the trial of said proceeding.

Richard H. Wilmer, Douglas L. Hatch, Attorneys for the Petitioner. Herman Oliphant, Attorney for the Respondent.

[fol. 55] The foregoing contains the substance of all the evidence given on the hearing of this proceeding. This statement of the evidence is duly stated, approved, and signed, and ordered to be made of record, in the above-entitled cause this 16th day of Sept., 1936.

By the Board.

(S.) Eugene Black, Member.

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

STIPULATION OF FACTS—Filed November 7, 1935

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the facts hereinafter set forth shall be taken as true, subject to any objections as to relevancy, and are the facts in this cause to be taken and considered by the Board of Tax Appeals the same to all intents and purposes as if the same facts had been proven and established by testimony on the trial [fol. 56] of said cause; provided, however, that this stipulation shall be without prejudice to the right of either party to introduce further and other evidence not inconsistent with the facts herein stipulated to be taken as true.

Universal Oil Products Company is a South Dakota corporation organized in 1914, and since its organization has been engaged in the business of developing and acquiring inventions for the treatment and refining of petroleum, and particularly the manufacture of gasoline therefrom, and obtaining and acquiring patents covering such inventions, and licensing the use of said inventions by others in consideration of the payment of royalties by such licensees to it for such use.

On January 6, 1931, all of the stockholders of Universal Oil Products Company, a South Dakota corporation, sold, delivered and transferred all of their stock in said Company to United Gasoline Corporation, a Delaware corporation, pursuant to and in accordance with a certain Purchase Agreement, a copy of which is hereto attached marked "Exhibit A" and made a part hereof;

None of said stockholders has been since said sale of his stock on January 6, 1931, a stockholder of said Universal Oil Products Company, or of said United Gasoline Cor-

poration, or has had, since said sale, any interest in the services rendered and to be rendered by any of the then or former employees, attorneys or experts of said Universal Oil Products Company, including petitioners, as employees, attorneys or experts of that Company, or otherwise, or in any other capacity;

[fol. 57] Prior to the sale, delivery and transfer of said stock on January 6, 1931, said Universal Oil Products Company had transferred and turned over to Unopco Corporation, a Delaware corporation, certain of the moneys and current assets of said Universal Oil Products Company; said Unopco Corporation never engaged in any business whatsoever prior to the time that said assets of said Universal Oil Products Company were transferred and turned over to it; since the transfer of said assets, Unopco Corporation has been engaged in the investment and reinvestment of said assets transferred to it by said Universal Oil Products Company; it never has engaged, and it was never intended that said Unopco Corporation should ever engage in the kind of business done by said Universal Oil Products Company.

Universal Oil Products Company continued in its business after the purchase of all of the stock of said Company by United Gasoline Corporation on January 6, 1931, and retained the greater part of its assets;

All of the stockholders of said Universal Oil Products Company who sold, delivered and transferred their stock on January 6, 1931, were from prior to January 6, 1931, and have continued to be and are now, stockholders of said Unopco Corporation in substantially the same proportions as their prior stockholdings in said Universal Oil Products Company;

After the sale, delivery and transfer of said stock on January 6, 1931, the former stockholders of said Universal Oil Products Company and the then stockholders of said Unopco Corporation, conferred together and concluded to [fol. 58] pay certain moneys to certain selected, then or former, employees, attorneys and experts of said Universal Oil Products Company;

Accordingly, a list of such employees, attorneys and experts was prepared, and thereupon, on January 9, 1931, at a meeting of the Board of Directors of said Unopco Corporation, a resolution was unanimously adopted, as follows:

"Resolved, that the Directors of this Corporation recommend to the stockholders of this Corporation that the sum of Six Hundred Seven Thousand Five Hundred Dollars ($607,500.) be appropriated, paid and distributed as a bonus to sixty-four (64) former and present employees, attorneys and experts of Universal Oil Products Company (the corporation of that name referred to in the meetings of this Corporation held on the fifth and sixth days of January, 1931), in recognition of the valuable and loyal services of said employees, attorneys and experts to said Universal Oil Products Company; such sum to be distributed among said sixty-four (64) employees, attorneys and experts in such amounts to each employee, attorney and expert as the Board of Directors of this Corporation shall determine; and that a special meeting of the stockholders of this Corporation be called to be held on Saturday, January 10, 1931, at the hour of 11:00 o'clock in the forenoon at the principal office of this corporation for the purpose of passing on this recommendation; and

"Resolved Further, that, subject to the approval of the [fol. 59] stockholders of this Corporation, this Corporation appropriate, pay and distribute as a bonus the said sum of Six Hundred Seven Thousand Five Hundred Dollars ($607,500.) to sixty-four (64) former and present employees, attorneys and experts of said Universal Oil Products Company in recognition of the valuable and loyal services of said employees, attorneys and experts, to said Universal Oil Products Company; such sum to be distributed among said sixty-four (64) employees, attorneys and experts in such amounts to each employee, attorney and expert as the Board of Directors of this Corporation shall determine."

Thereupon, on January 10, 1931, at a meeting attended by all of the stockholders of Unopco Corporation, the following resolution was unanimously adopted:

"Resolved, that the following recommendations made by the Board of Directors to the stockholders of this Corporation in the meeting of the Board of Directors held on January 9, 1931, viz.:

"That the sum of Six Hundred Seven Thousand Five Hundred Dollars ($607,500.) be appropriated, paid and distributed as a bonus to sixty-four (64) former and present

employees, attorneys and experts of Universal Oil Products Company (the corporation of that name referred to in the meeting of this Corporation held on the fifth and sixth days of January, 1931), in recognition of the valuable and loyal [fol. 60] services of said employees, attorneys and experts to said Universal Oil Products Company; such sum to be distributed among said sixty-four (64) employees, attorneys and experts in such amounts to each employee, attorney and expert as the Board of Directors of this corporation shall determine;

be and the same are hereby in all things approved; and

"Resolved Further, that this Corporation do appropriate, pay and distribute the said sum of Six Hundred Seven Thousand Five Hundred Dollars ($607,500.) as a bonus to sixty-four (64) former and present employees, attorneys and experts of said Universal Oil Products Company, in recognition of the valuable and loyal services of said employees, attorneys and experts to said Universal Oil Products Company; said sum to be distributed among said sixty-four (64) employees, attorneys and experts in such amounts to each employee, attorney and expert, as the Board of Directors of this Corporation shall determine."

Pursuant to and in accordance with said resolutions, the officers of said *Unopco Corporation* paid certain moneys, in the amounts determined by its Board of Directors, pursuant to said resolution of said stockholders, to certain of the then present and former employees, attorneys and experts of said Universal Oil Products Company designated by such Board of Directors; among the employees, attorneys and experts so paid, the following, the petitioners herein, [fol. 61] were, after January 10, 1931, and in January, 1931, paid the amounts set opposite their respective names, viz.:

Jacque C. Morrell	$25,000
Gustav Egloff	100,000
Lyman C. Huff	40,000
Edwin F. Nelson	10,000
Jean Delattre-Seguy	25,000
Bernard G. Lenske	5,000
James V. Willett	5,000
George A. Bockman	5,000
Maurice S. Beyt	5,000
Frank J. Mack	5,000

Macaulay Carter	10,000
E. M. Matson	5,000
Robert M. Kerr	40,000
William H. Walker	10,000
W. F. Hall	50,000
Neal S. Olsen	10,000
Donald J. Bergman	20,000
Arthur G. Bogardus	10,000

At no time prior to the sale of said stock of said Universal Oil Products Company on January 6, 1931, was the matter of making any money payments to any of the present and former employees, attorneys, or experts of said Universal Oil Products Company, in addition to the salaries, fees or compensation to which they were entitled under their employment contracts or retainers with said Universal Oil Products Company, discussed or considered by and between the stockholders of said Universal Oil Products Company, who sold all of their stock as aforesaid on January 6, 1931, [fol. 62] and said matter was never discussed or considered among said stockholders until after the consummation of said sale of said stock after January 6, 1931. The matter of making any such money payments was never discussed or considered at any time between any of the said employees, attorneys and experts of said Universal Oil Products Company and the officers, directors or stockholders of said Universal Oil Products Company. The first notice or knowledge that any of the said employees, attorneys or experts of said Universal Oil Products, including the employees, attorneys and experts referred to in the said resolutions of the Board of Directors and stockholders of said Unopco Corporation, hereinbefore set forth, had of any purpose or intention on the part of said Unopco Corporation and of its stockholders to make any such money payments, was after said resolutions had been passed. Said monies were voted to be paid and were paid under and by virtue of said resolutions and were paid without any agreement or understanding, expressed or implied, between any of said employees, attorneys or experts referred to in said resolutions, including petitioners, and said Universal Oil Products Company or any of its officers or directors or stockholders, or said Unopco Corporation or any of its officers, directors or stockholders, and without any requests therefor by any of said employees, attorneys or experts, but as hereinbefore stated

said payments were made at the sole instance of said Unopco Corporation and of its stockholders.

None of said employees, attorneys and experts referred to in said resolutions, including petitioners, to whom said [fol. 63] moneys were paid pursuant to and in accordance with said resolutions, hereinabove set forth, was ever in the employ of said Unopco Corporation, or of any of its stockholders, or of any of the former stockholders of said Universal Oil Products Company who sold their stock to said United Gasoline Corporation, as hereinbefore stated, or ever rendered any services to said Unopco Corporation or to any of its stockholders, and it was never agreed, understood or intended by anyone that any of them should or would ever render any such services at any time in the future.

None of the moneys so paid to any of said employees, attorneys or experts, including petitioners, was paid to any of them in payment for or in consideration of any services rendered or ever to be rendered, or of any consideration of any kind or character paid or given, or ever to be paid or given by any of said employees, attorneys or experts, including petitioners, to said Unopco Corporation.

Each and all of said employees, attorneys and experts, including petitioners, were prior to the payment of said moneys, employed or retained by said Universal Oil Products Company under agreements or contracts of employment or retainers; each and all of said employees, attorneys and experts, including petitioners had been paid by said Universal Oil Products Company, according to said agreements or contracts of employment or retainers, all the salary and compensation due them from said Universal Oil Products Company for the services rendered by them to said Universal Oil Products Company, prior and up to the time said payments were authorized by the Board of Directors [fol. 64] and stockholders of said Unopco Corporation and were made; neither said Universal Oil Products Company nor said United Gasoline Corporation was under any legal or other obligation to pay said employees, attorneys and experts, including petitioners, any additional salary or compensation other than the salary and compensation to which they were entitled and were paid by said Universal Oil Products Company under and by virtue of their said agreements or contracts of employment or retainers, or to pay to any of said employees, attorneys and experts, including

petitioners, any of said moneys paid to them by said Unopco Corporation, as hereinabove stated and set forth, and none of said employees, attorneys or experts, including petitioners, has ever asserted any such claim or has any intention of asserting any such claim against any of said companies.

Neither said Unopco Corporation nor any of its stockholders, nor any of the stockholders of Universal Oil Products Company, was at any time under any legal or other obligation to pay any of said employees, attorneys or experts, including petitioners, any salary, compensation or consideration of any kind. None of said employees, attorneys or experts, including petitioners, has ever asserted any claim or had any intention of asserting any claim against said Unopco Corporation, or against any of its stockholders, or against any of said former stockholders of said Universal Oil Products, for any salary, compensation or consideration for any services, or for anything else.

Each and all of the payments made to said employees, at- [fol. 65] torneys and experts of Universal Oil Products Company, including petitioners, pursuant to said resolutions of the Board of Directors and Stockholders of Unopco Corporation, were made by Unopco Corporation, at the instance of its stockholders, and without any legal or other obligation on the part of said Unopco Corporation or its stockholders to make said payments, in whole or in part, and none of said payments were made pursuant to or in fulfillment of any agreement of understanding, express or implied, with said employees, attorneys and experts, that any of said payments, or any part thereof, should or would be made; said payments were not made or intended to be made by said Unopco Corporation or any of its stockholders as payment or compensation for any services rendered or to be rendered or for any consideration given or to be given by any of said employees, attorneys or experts to said Unopco Corporation or to any of its stockholders. All of the recipients of said moneys, including petitioners, either were employees, attorneys or experts of said Universal Oil Products Company at the time of the payment of said moneys or had been prior thereto.

H. J. Halle, the President of Unopco Corporation, personally distributed said moneys to the petitioners and to other employees, attorneys and experts referred to in said

resolutions of the Board of Directors and of the stockholders of said Unopco Corporation, hereinabove set forth, either by personally delivering the checks of said Unopco Corporation for the moneys paid to each, or by transmitting and delivering said checks by mail, through the United States mail, accompanied by letters of said H. J. Halle to [fol. 66] such employees, attorneys and experts; in each instance where the checks were delivered in person, as aforesaid, said H. J. Halle stated to each of the recipients, as and when he delivered said checks to them, that the moneys represented by said checks were given to them and each of them, by said Unopco Corporation, at the instance of the stockholders of said Unopco Corporation, as a gift and gratuity, and were therefore not subject to income tax on the part of such recipients; in the instances where the checks were delivered by mail, they were accompanied by letters of H. J. Halle, as aforesaid, and he stated in said letters that the moneys represented by said checks were given as gifts and gratuities by said Unopco Corporation at the instance of its stockholders, and that because and in consequence thereof, they were income tax free, and not accountable on the part of such recipient in his income tax return; the copies of the letters hereto attached, marked Exhibits "B," "C," "D," "E," "F," "G," "H," "I," "J" and "K" are correct copies and examples of said letters sent by mail, as aforesaid.

Each and all of said employees, attorneys and experts who received and accepted said checks, and the moneys represented thereby, including each and all of the petitioners, received and accepted said moneys and were informed by said H. J. Halle that the same were gifts and gratuities.

Neither said Unopco Corporation nor said Universal Oil Products Company nor said United Gasoline Corporation, nor any of the stockholders of any of said companies, ever made or claimed any deduction whatsoever for Federal [fol. 67] Income Tax purposes because and on account of the payment of any of the moneys paid to said employees, attorneys and experts, including petitioners, pursuant to said resolutions of the Board of Directors and stockholders of said Unopco Corporation, but said Unopco Corporation in January, 1931, charged all of the moneys so paid to Surplus Account on the books of that Company; each and all of said employees, attorneys and experts, including each and

all of the petitioners, treated the payment of said moneys as gifts and gratuities and therefore income tax free, and accordingly none of them made any income tax return on account of the receipt of said moneys.

Richard H. Wilmer, R. G. Sutherland, Merlin A. Muth, Attorneys for Petitioners. Robert H. Jackson, Attorney for Respondents.

EXHIBIT "B" TO STIPULATION

Copy

New York, January 22, 1931.

Jean Delattre-Seguy, Esq., 2141 Wyoming Ave., Washington, D. C.

DEAR JEAN:

Here is the slice of bacon which the old stockholders of [fol. 68] Universal want you to have as a gift from them, and which was saved for you out of the party given on January 6 at Chicago. You need not account for this in your income tax return, as gifts are free from tax.

May I suggest, and in doing so reflect the strong opinion of all my associates, that this fund ought to be put aside by you, and invested in the safest securities, preferably municipal bonds as a nest egg to build on. If you agree, suggest you return it with your endorsement, and with any instructions that you may have to give.

Please do not make mention to anyone of the amount of this check. We are making a limited number of distributions in varying amounts, and therefore prefer that you neither ask others nor tell anyone what you got.

With all good wishes.

Yours very truly —— ——.

HJH:er.
Enclosure.

EXHIBIT "C" TO STIPULATION

Copy

New York, January 20, 1931.

Dr. Victor Henny, Universal Oil Products Company Representative, Bush House, Aldwych, London, W. C: 2, England.

DEAR DR. HENNY:

The enclosed check is sent you on behalf of all of the old [fol. 69] stockholders of Universal as a gift to you in appreciation of the relationship which has existed, and because you were considered one of the family this piece of cake has been saved for you from the party we gave here January 6.

May I suggest in your interest, in view of the tax situation, that you return this check with your endorsement and such instructions as you may have to give either for its deposit or for conversion into securities. If the latter, would suggest municipal bonds, which are tax free in the United States, yielding four per cent. or a shade better. This is the security in which I am personally investing, likewise Mrs. Armour and others with a view mainly to safety of principal, and with little or no regard for speculative values.

It will be a comfort for us to know that you look on this fund in the same light in your own behalf and on behalf of your family, but with the understanding that you are free to do with it as you please.

Please make no mention of the amount of this check to anyone other than to any of our stockholders from whom it is derived.

With all good wishes,

Yours very truly, —— ——.

HJH:er.
Enclosure.

cc. HJH RJD AFR FLB JJM.

[fol. 70] EXHIBIT "D" TO STIPULATION

Copy

New York, January 20, 1931.

Dr. V. Henny, Universal Oil Products Co. Representative, Bush House, Aldwych, London, W. C. 2, England.

DEAR DR. HENNY:

We are sending Wilcox' check for Twenty-five Hundred Dollars, and Alberding one of same amount, and likewise to Edeleanu at Bucharest, all of which we are happy to do. We want you to know about this.

HJH:er.
Enclosure.

cc.HJH RJD AFR FLB JJM.

EXHIBIT "E" TO STIPULATION

Copy

New York, January 20, 1931.

Mr. J. M. Wilcox, % Dr. V. Henny, Representative, Universal Oil Products Company, Bush House, Aldwych, London, W. C. 2, England.

DEAR MR. WILCOX:

As an evidence of our appreciation, and in the desire to have you know that you are considered one of the family, [fol. 71] the old stockholders of Universal send you the enclosed check as evidence of the fact that you were not forgotten when the party was given here January 6, even though you were not present.

It is purely a gift, and need not therefore be accounted as income. If you wish for tax purposes that these funds be kept here, please endorse the check and return with your instructions either for deposit or for investment in municipal bonds or any other similar and absolutely safe security,

but without any restrictions on you to do do with it as you please.

Yours very truly, —— ——.

HJH:er.
Enclosure.

CC.HJH RJD AFR FLB JJM.

EXHIBIT "F" TO STIPULATION

Copy

New York, January 20, 1931.

Mr. C. H. Alberding, % Dr. V. Henny, Bush House, Aldwych, London, W. C. 2, England.

DEAR ALBERDING:

You know what happened here on January 6, so will not go into details.

[fol. 72] Want you to know, however, that as a member of the family you are to participate in the event to the extent of the enclosed check which is a gift to you on behalf of all the old stockholders.

If for tax reasons you prefer to have these funds here in the United States, or invested, say, in municipal bonds or in any other manner, please endorse the check and return it with your instructions.

Your very truly, —— ——.

HJH:er.
Enclosure.

cc. HJH RJD AFR FLB JJM.

EXHIBIT "G" TO STIPULATION

Copy

New York, January 20, 1931.

William Fairfax Hall, Esq., Victor Building, Washington, D. C.

DEAR MR. HALL:

It is with more than usual pleasure that I send you herewith, at the request of and on behalf of all the old stock-

holders, a check to your order for Fifty Thousand Dollars. This is a gift purely personal for you, and is not to be considered a partnership or corporation matter by you, [fol. 73] and is consequently also not subject to income tax by you.

This is your piece of cake from the party we held in Chicago on January 6, in recognition and appreciation of our association throughout the years. We prefer that no mention be made by you of the amount of this check to others than the stockholders from whom it comes.

We were most happy indeed, as you can well appreciate, to receive the decision of Judge Runyon, and at a most dramatic moment. It came within an hour of the exchange of papers, and the effect was quite startling on those adversely affected.

Yours very truly, —— ——.

HJH:er.

cc. RJD FLB JJM AFR HJH.

EXHIBIT "H" TO STIPULATION

Copy

New York, January 20, 1931.

Mr. W. R. Howard, 95 Rust Building, Washington, D. C.

DEAR BILL:

Sorry I could not see you while in Chicago, but I was unduly rushed for the past two weeks, as you know. [fol. 74] We saved a little piece of cake for you from the party we had on January 6, and am happy to enclose herewith check to your order, which is a gift from all the stockholders. Inasmuch as this is purely a gift, you need not account for it in your federal income tax report.

With all good wishes and kind regards,

Yours very truly, —— ——.

HJH:er.
Enclosure.

cc. RHD FLB JJM AFR HJH.

EXHIBIT "I" TO STIPULATION

Copy

New York, January 20, 1931.

Professor William H. McAdams, 14 Netherlands Road, Brookline, Massachusetts.

DEAR PROFESSOR MCADAMS:

I am very happy to send you herewith check for One Thousand Dollars, which is purely a gift from the old stockholders of Universal in appreciation of the pleasant relationship which has existed, and your enthusiastic support, and made possible by the affair that occurred in Chicago January 6.

With all good wishes and kind regards,

Yours very truly, —— ——.

HJH:er.

cc. HJH RJD FLB JJM AFR.

[fol. 75] EXHIBIT "J" TO STIPULATION

Copy

New York, January 20, 1931.

Professor Harold C. Weber, 160 Brook Road, Milton, Massachusetts.

DEAR PROFESSOR WEBER:

The enclosed check for One Thousand Dollars is sent you at the request of and on behalf of all the old stockholders of Universal, purely as a gift, and so that you might also participate in the affair which took place in Chicago on January 6.

With all good wishes and personal regards,

Yours very truly, —— ——.

HJH:er.
Enclosure.

cc. HJH RJD FLB JJM AFR.

EXHIBIT "K" TO STIPULATION

Copy

New York, January 20, 1931.

Mr. Will F. Sims, Care Panhandle Refining Company, Panhandle Building, P. O. Box 1107, Wichita Falls, Texas.

DEAR MR. SIMS:

No doubt you have read reports of what occurred in the affairs of the Company at Chicago on January 6. We [fol. 76] thought of you at that time, and your old association with us, your enthusiastic and helpful support, and as a result, on behalf of all the old stockholders, am sending you herewith check to your order for Five Thousand Dollars, for we considered you one of the family in the old days. I hope throughout the years you will continue to feel that you are still a member of the family.

This is purely a gift, and therefore you need not account for it to the Government in your income tax.

I shall continue with the new Company in the same relationship. This is at the request of all concerned, though I would have been glad to be relieved of the continuing responsibility, happy as I have been through the years, in the progress that has been made, to which you contributed in the early days, and I hope to be as happy in the new associations.

With all good wishes to you and your family for your health and happiness,

Yours very truly, —— ——.

HJH:er.
Enclosure.

cc. HJH RJD FLB AFR JJM.

[fol. 77] PETITIONER'S EXHIBIT 1

Employees of Universal Oil Products Company Year 1930	Salary per Yr. 1930	Bonus Paid by Universal Oil Products Company, Year 1930	Monies Paid by Unopco Corporation January 1931
J. G. Alther	$18,000.00	$6,000.00	$
R. J. Dunham, Jr.	5,310.00	1,000.00	
J. Delattre-Seguy	9,600.00	5,400.00	25,000.00
N. S. Olsen	6,000.00	1,000.00	10,000.00
R. M. Kerr	4,800.00	2,000.00	40,000.00
N. H. McAdams	1,800.00	1,000.00	
H. C. Weber	1,200.00	1,000.00	
W. R. Howard	3,600.00	100.00	2,500.00
J. B. Heid	4,200.00	800.00	
Gustaf Egloff	14,400.00	5,600.00	100,000.00
—. F. Faragher	9,000.00	6,000.00	10,000.00
Robert Pyzel	7,200.00	1,800.00	10,000.00
Otto Behimer	15,000.00	5,300.00	
M. S. Beyt	4,800.00	600.00	5,000.00
Geo. B. Murphy	5,000.00	1,200.00	
Victor Henny	15,000.00	5,000.00	50,000.00
Ion Edeleanu	4,090.80	1,000.00	2,500.00
Joachim Hausman	1,227.24	200.00	
A. G. Bogardus	6,000.00	2,000.00	10,000.00
Macauley Carter	6,000.00	1,000.00	10,000.00
W. M. Drown, Jr.	3,600.00	600.00	
G. W. Miller	5,400.00	750.00	5,000.00
N. G. dePachat	4,800.00	600.00	
J. C. Morrell	10,800.00	2,200.00	25,000.00
B. G. Lenske	5,400.00	1,200.00	5,000.00
Jessie Baxter	3,000.00	600.00	2,500.00
George Bockman	5,100.00	600.00	5,000.00
J. Conviser	4,500.00	500.00	5,000.00
L. C. Huff	13,200.00	3,600.00	40,000.00
D. J. Bergman	8,400.00	1,000.00	20,000.00
—. V. Willett	5,700.00	1,000.00	5,000.00
S. R. Wilson	9,000.00	1,800.00	10,000.00
F. J. Mack	7,500.00	1,000.00	5,000.00
H. W. Bieze	4,500.00	500.00	
F. J. Ritz	4,200.00	500.00	1,000.00
R. E. Nagel	6,000.00	750.00	5,000.00
H. P. Benner	9,000.00	2,500.00	15,000.00
G. H. Alberding	7,200.00	1,500.00	2,500.00
S. L. Holt	4,500.00	750.00	
Fay E. Stewart	5,400.00	750.00	2,500.00
W. F. Vineyard	4,800.00	1,000.00	2,500.00
R. D. Williams	3,900.00	500.00	
E. M. Matson	5,400.00	750.00	5,000.00
J. S. Miller	6,600.00	1,200.00	5,000.00
Edwin F. Nelson	5,400.00	1,000.00	10,000.00

PETITIONER'S EXHIBIT 1—Continued

Employees of Universal Oil Products Company Year 1930	Salary per Yr. 1930	Bonus Paid by Universal Oil Products Company, Year 1930	Monies Paid by Unopco Corporation January 1931
Ida Redlefsen	1,912.50	300.00	1,000.00
L. M. Healy	1,776.14	300.00	
W. R. Kinnaird	4,800.00	600.00	2,500.00
W. H. Jones	5,113.50	511.35	
B. H. Davies	2,629.80	262.98	
J. R. Lowery	1,982.09	198.21	
A. E. Whyman	1,753.20	175.32	
B. S. Brailey	2,337.60	233.76	
W. G. Gross	2,337.60	233.76	
F. L. Sager	2,922.00	292.20	
M. D. Gilchrist	3,303.12	330.31	
W. Duff	2,629.80	262.98	
N. G. Kosloff	1,266.20	126.62	
Ellen J. E. Neate	1,772.68	177.27	
Edith R. Fisk	1,266.20	126.62	
Ruby G. Wortman	1,076.27	107.63	
Frances W. Stannard	886.34	88.63	
Doris M. Brown	759.72	75.97	
Muriel E. Brown	430.10	43.01	
Muriel M. Russell	684.24	68.42	
W. H. Andrau	2,400.00	240.00	
F. L. Burr	80.35	8.04	
[fol. 78]			
R. F. Davis	4,800.00	480.00	
C. H. Angell	3,600.00	360.00	1,000.00
G. T. Tobiasson	3,600.00	360.00	1,000.00
Mayme Forsland	1,440.00	144.00	
Mabel Nutting	877.33	87.73	
Louise Harlan	1,620.00	162.00	
Pearl Wilson	1,560.00	156.00	
F. W. Leffer	2,550.00	255.00	
Dr. Leopold Singer	5,000.00	500.00	
Paul Truesdell	15,000.00	1,500.00	
E. V. Pherigo	1,129.33	112.93	
Lydia Fredericks	2,100.00	210.00	
Estelle Robbins	1,322.42	132.24	
Ethel Soilky	1,740.00	174.00	
Arline Hartl	332.09	33.21	
E. W. Whitcombe	4,200.00	420.00	2,500.00
A. W. Lindahl	3,600.00	360 00	
M. L. Overstreet	4,200.00	420.00	
P. J. Mueller	2,880.00	288.00	
S. G. Heath	2,700.00	270.00	
J. G. McCarte	2,220.00	222.00	
W. J. Ireland	1,620.00	162.00	
Jeannette Bates	2,100.00	210.00	
Leola Glass	1,680.00	168.00	
Esther Lockwood	1,680.00	168.0–	

PETITIONER'S EXHIBIT 1—Continued

Employees of Universal Oil Products Company Year 1930	Salary per Yr. 1930	Bonus Paid by Universal Oil Products Company, Year 1930	Monies Paid by Unopco Corporation January 1931
J. R. McGowan	2,700.00	270.0–	
L. M. Newton	2,700.00	270.0–	
H. Anderson	2,985.48	298.5–	
H. A. Becker	2,340.00	234.00	
S. I. Bloomquist	536.67	353.67	
C. E. Bodin	417.74	41.77	
R. H. Brandt	4,200.00	420.00	
O. A. Byrk	2,386.67	238.67	
F. J. Carlin	2,100.00	210.00	
L. W. Chatroop	2,400.00	240.00	
H. Cressey	2,100.00	210.00	
J. J. Daley	2,220.00	222.00	
W. W. Dee	1,920.00	192.00	
—. M. Dziadul	741.00	74.10	
E. G. Goransson	2,059.17	205.92	
F. A. Groth	371.62	37.16	
D. S. Graham	495.16	39.52	
R. F. Gray	2,400.00	240.00	
M. Greenwald	1,080.00	108.00	
Irving Hasse	1,080.00	108.00	
J. J. Heifler	2,100.00	210.00	
W. W. Heinze	2,220.00	222.00	
Walter Hensel	2,700.00	270.00	
H. H. Hultman	3,000.00	300.00	
C. Jaguske	2,820.00	282.00	
W. A. Jenrich	2,220.00	222.00	
R. H. Karl	2,100.00	210.00	
C. W. Kerner	3,120.00	312.00	
B. L. Kramer	2,160.00	216.00	
C. W. Langefeld	2,280.00	228.00	
W. B. Leyerle	2,220.00	222.00	
A. W. Lokke	2,100.00	210.00	
E. B. Lund	2,160.00	216.00	
J. Maras	358.06	35.81	
C. Maratos	2,820.00	282.00	
B. May——	2,220.00	222.00	
S. T. McDermott	3,180.00	318.00	
S. S. Miller	400.81	40.08	
R. T. Moore	2,820.00	282.00	
W. L. Morgan	2,400.00	240.00	
L. J. Nelson	2,220.00	222.00	
D. J. Niotis	525.00	52.50	
J. P. Odegaard	536.67	53.67	
A. C. Proctor	3,000.00	300.00	
A. C. Rasmussen	2,700.00	270.00	
J. H. Riley	1,002.17	100.22	
P. H. Roaller	530.67	53.67	
A. Saether	560.00	56.00	

PETITIONER'S EXHIBIT 1—Continued

Employees of Universal Oil Products Company Year 1930	Salary per Yr. 1930	Bonus Paid by Universal Oil Products Company, Year 1930	Monies Paid by Unopco Corporation January 1931
[fol. 79]			
John B. Barnes	$1,500.00	$150.00	
Randi Andersen	1,750.00	175.00	
Felix Skowronski	5,400.00	540.00	
W. G. Mayo	3,600.00	360.00	
Arthur Conolly	1,250.00	125.00	
A. P. Van Headen	3,300.00	330.00	
R. E. Whitlock	2,175.00	217.50	
W. McCaffrey	1,750.00	175.00	
K. Swartwood	2,340.00	234.00	
A. Engelstein	2,190.00	219.00	
Florence E. Tidmarsh	2,130.00	213.00	
Mary Frawley	1,260.00	126.00	
Viven Fleet	330.00	33.00	
Virginia M. Hawkins	435.48	43.54	
Harold A. Jefferson	517.83	51.78	
Harold Enwright	361.70	36.17	
Harry Weaver	1,200.00	120.00	
Soule S. Weems	833.33	83.33	
Gertrude Hess	1,050.00	105.00	
W. J. Gudkov	4,000.00	400.00	
Rosamond A. Mix	1,963.38	196.34	
Ethelynn Marsh	1,800.00	180.00	
Gladys Riddle	1,458.33	145.83	
C. Batey	1,680.00	168.00	
B. A. Christ	1,860.00	186.00	
O. E. Cihlar	1,800.00	180.00	
Willard Hess	2,040.00	204.00	
C. A. Lockwood	3,000.00	300.00	
D. M. Owen	1,680.00	168.00	
A. A. Reynolds	2,640.00	264.00	
—. W. Schenk	1,500.00	150.00	
L. Widegren	1,020.00	102.00	
C. G. Wrege	3,000.00	300.00	
Cornell Allness	1,268.67	126.87	
Dorothy Hepworth	1,500.00	150.00	
Ruth Kvidera	1,489.92	148.99	
Evelyn O'Brien	1,920.00	192.00	
Lois A. Starkey	1,049.90	104.99	
Alice Vopicka	945.00	94.50	
J. C. Parmely	6,780.00	678.00	5,000.00
A. J. Argraves	3,720.00	372.00	
M. W. Barnes	2,400.00	240.00	
J. C. Dasso	2,820.00	282.00	
J. W. Davis	2,520.00	252.00	
I. S. Dobbs	2,220.00	222.00	
O. H. Fairchild	3,900.00	390.00	5,000.00

PETITIONER'S EXHIBIT 1—Continued

Employees of Universal Oil Products Company Year 1930	Salary per Yr. 1930	Bonus Paid by Universal Oil Products Company, Year 1930	Monies Paid by Unopco Corporation January 1931
B. H. Hawkins	4,080.00	408.00	1,000.00
H. F. Huff	4,800.00	480.00	5,000.00
W. E. Hulsberg	2,940.00	294.00	
E. C. Leonhardy	3,000.00	300.00	
P. Mather	5,090.00	509.00	
L. A. Mekler	6,000.00	600.00	2,500.00
E. T. Steele	3,900.00	390.00	1,000.00
E. L. Stewart	3,600.00	360.00	1,000.00
C. L. Wedell	2,700.00	270.00	
Edith Anderson	1,920.00	192.00	
Nellie Gilmore	1,668.71	166.87	
Gladys Hague	1,590.00	159.00	
Sarah Kramer	1,800.00	180.00	
L. M. Langley	2,051.37	205.14	
J. P. Lucas	1,338.78	133.88	
Cecelia Maley	1,725.00	172.50	
A. H. Yetter	2,000.00	200.00	1,000.00
Badona L. Levinson	554.17	55.42	
Winifred M. Bridges	933.33	93.33	
[fol. 80]			
A. Savitsky	1,352.94	135.29	
H. Schumacher	1,380.00	138.00	
J. Shimek	2,047.50	204.75	
A. M. Shoresman	516.53	51.65	
J. E. Stanger	429.03	42.90	
A. G. Wagner	2,100.00	210.00	
I. I. Waller	417.74	41.77	
J. B. Webb	2,760.00	276.00	
H. D. Willmers	2,160.00	216.00	
T. G. Valinda	395.16	39.52	
W. M. Labastille	378.23	37.82	
R. C. Rathbun	378.23	37.82	
B. V. Weinper	378.23	37.82	
A. E. Wasencraft	373.33	37.33	
P. Nordstad	387.90	38.79	
C. J. Heine	256.67	25.67	
R. Nelson	256.67	25.67	
G. W. Beddall	3,600.00	360.00	
R. B. Hopkins	2,200.00	220.00	
W. H. Minkema	4,500.00	450.00	
G. E. Shelton	4,200.00	420.00	
E. B. Sherwood	3,750.00	375.00	
F. W. Taylor	3,900.00	390.00	
L. Wenzer	3,600.00	360.00	
W. R. Dial	1,620.00	162.00	
O. N. Miller	5,100.00	510.00	
J. M. Wilcox	5,600.00	560.00	2,500.00

PETITIONER'S EXHIBIT 1—Continued

Employees of Universal Oil Products Company Year 1930	Salary per Yr. 1930	Bonus Paid by Universal Oil Products Company, Year 1930	Monies Paid by Unopco Corporation January 1931
F. F. Carter	3,600.00	360.00	
R. G. Juhre	3,600.00	360.00	
H. P. Andrews	3,300.00	330.00	
J. Beddow	1,400.00	140.00	
—. R. Kanhofer	3,000.00	300.00	
E. A. Goff	4,200.00	420.00	
B. F. McAlester	3,900.00	390.00	
E. C. Beach	3,600.00	360.00	
F. B. Carver	3,600.00	360.00	
J. C. Green	3,300.00	330.00	
W. A. Keightley	3,300.00	330.00	
R. A. Cordt	1,260.00	126.00	
Bernice Hague	141.92	14.19	
B. W. Morgan	5,100.00	510.00	1,500.00
L. O. McNally	5,100.00	510.00	1,000.00
Emma E. Crandal	2,700.00	270.00	
Evelyn Laatz	1,440.00	144.00	
G. P. Boon	2,280.00	228.00	
R. C. Benson	1,980.00	198.00	
H. G. Vincent	1,920.00	192.00	
F. J. Gervais	3,480.00	348.00	
W. Boss	2,340.00	234.00	
H. O. Munn	2,700.00	270.00	
H. Rodman	2,040.00	204.00	
C. Uhlich	1,884.00	188.40	
G. F. White	1,980.00	198.00	
E. L. Miller	1,920.00	192.00	
G. Maronic	2,160.00	216.00	
S. Susich	1,740.00	174.00	
W. Klobuchar	1,920.00	192.00	
F. Kruzich	1,680.00	168.00	
F. Rachik	1,680.00	168.00	
J. Kosmerl	1,320.00	132.00	
S. Wilson	1,320.00	132.00	
W. J. Evans	660.00	66.00	
M. Peters	1,878.16	187.82	
E. Pavlis	1,560.00	156.00	
F. Wisek	1,560.00	156.00	
T. Mance	1,560.00	156.00	
[fol. 81]			
T. P. Rowley	1,360.00	136.00	
C. B. Layton	2,460.00	246.00	
E. Brown	916.29	91.63	
C. Rohlfing	2,520.00	252.00	
W. F. Brown	2,580.00	258.00	
C. H. Davis	2,280.00	228.00	
E. Sondregger	2,280.00	228.00	
W. F. Morris	2,280.00	228.00	
A. Bacastow	2,280.00	228.00	

PETITIONER'S EXHIBIT 1—Continued

Employees of Universal Oil Products Company Year 1930	Salary per Yr. 1930	Bonus Paid by Universal Oil Products Company, Year 1930	Monies Paid by Unopco Corporation January 1931
R. Gasaway	$2,100.00	$210.00	
G. Royse	2,100.00	210.00	
B. H. Sellen	2,160.00	216.00	
R. K. Jones	2,400.00	240.00	
E. Chambers	1,429.28	142.93	
A. Gatz	2,040.00	204.00	
B. C. Powell	1,980.00	198.00	
R. Murray	1,980.00	198.00	
W. Creger	1,925.00	192.50	
F. W. Reardon	1,980.00	198.00	
W. E. Turvey	1,980.00	198.00	
C. E. Johnson	1,980.00	198.00	
W. G. Evans	2,040.00	204.00	
H. E. Raguse	1,358.83	135.88	
L. Huffman	1,718.58	171.86	
R. Gabbert	1,329.55	132.95	
L. Allen	1,090.70	109.07	
G. Sondregger	1,058.95	105.90	
W. Frandsen	1,064.15	106.42	
E. Seigwart	1,058.95	105.90	
P. Cunningham	1,391.10	139.11	
Wm. Vickery	1,102.50	110.25	
—. W. Kelly	2,100.00	210.00	
W. H. Besselman	1,366.67	136.67	1,000.00
B. J. Flock	2,880.00	288.00	
B. D. Wells	2,100.00	210.00	
E. H. McGrew	2,580.00	258.00	
J. B. White, Jr	2,700.00	270.00	
C. G. Gerhold	2,100.00	210.00	
Charles Wirth III	3,000.00	300.00	
M. C. Sumpter	1,983.37	198.34	
W. B. Shanley	1,340.00	134.00	
R. A. Weppner	1,340.00	134.00	
R. C. Wackher	960.00	96.00	
C. G. Dryer	1,132.26	113.23	
W. K. Simpson	530.00	53.00	
V. Mekler	3,450.00	345.00	
W. H. Hubner	3,600.00	360.00	
C. Larsen	1,800.00	180.00	
A. R. Jensen	1,800.00	180.00	
O. I. Lewis	921.10	92.11	
Marie B. Lewins	1,920.00	192.00	
Elvira Raguse	1,440.00	144.00	
De Elda Ridley	509.52	50.95	
Rose Antolich	1,200.00	120.00	
Berna Deanne Feely	1,200.00	120.00	
Edith Mellbom	1,080.00	108.00	
Eleanor Ross	990.00	99.00	
Alice Bokholdt	969.35	96.94	
Vlasta Jurack	413.71	41.37	

PETITIONER'S EXHIBIT 1—Continued

Employees of Universal Oil Products Company Year 1930	Salary per Yr. 1930	Bonus Paid by Universal Oil Products Company, Year 1930	Monies Paid by Unopco Corporation January 1931
Florence Dusky	1,080.00	108.00	
Ethel Hitchcock	509.52	50.95	
J. L. Essex	5,100.00	510.00	
C. D. Lowry, Jr.	5,000.00	500.00	
I. Levine	3,300.00	330.00	
S. Comay	3,480.00	348.00	
R. Schaad	3,000.00	300.00	
G. S. Monroe	3,480.00	348.00	
H. T. Bollman	795.00	79.50	
A. L. Jackson	2,400.00	240.00	
A. H. Walbaum	2,100.00	210.00	
[fol. 82]			
W. C. Shand	2,100.00	210.00	
R. W. Moehl	2,100.00	210.00	
J. R. Strong	2,100.00	210.00	
F. B. Behrens	2,100.00	210.00	
W. L. Benedict	2,100.00	210.00	
F. J. Vitovec, Jr.	2,100.00	210.00	
M. A. Smith	1,800.00	180.00	
R. Castanien	1,800.00	180.00	
E. A. Luchterhand	1,407.58	140.76	
W. B. Borst	1,335.00	133.50	
M. J. Stross	1,575.00	157.50	
H. Pines	1,258.87	125.89	
F. M. Keller	1,230.00	123.00	
J. J. Jeans	1,680.00	168.00	
A. F. Millard	1,262.45	126.25	
F. Mastelick	737.00	73.70	
J. Kruzich	890.45	89.05	
W. D. Leighton	1,800.00	180.00	
M. W. Cox	1,620.00	162.00	
G. A. Erickson	1,492.50	149.25	
H. Hoover	1,090.53	109.05	
W. G. Shields	806.80	80.68	
J. Grutka	860.10	86.01	
E. L. Kidwell	564.30	56.43	
—. K. Majich	1,893.00	189.30	
M. Strukel	1,674.40	167.44	
A. C. England	1,799.32	179.93	
B. Strutzenberg	1,650.03	165.00	
A. L. Seneca	1,323.40	132.34	
W. Nimmo	502.78	50.28	
Elmer Morris	1,036.05	103.61	
E. E. Falb	1,467.74	146.77	
S. L. Priestman	1,635.16	163.52	
J. T. Vesely	296.29	29.63	
A. Hasse	59.76	5.98	
		$144,450.02	

[fol. 83] PETITIONER'S EXHIBIT 2

Year	Total Payroll Universal Oil Products Co.	Bonus Universal Oil Products Co.
1925	$397,483.16	$43,917.92
1926	612,737.78	67,967.15
1927	748,733.46	81,775.00
1928	782,136.26	103,544.55
1929	1,104,788.85	136,383.55
1930	1,169,947.08	144,450.02

[fol. 84] PETITIONER'S EXHIBIT 3

		Monies Paid by Unopco Corporation January, 1931
William Fairfax Hall	Attorney	$50,000
Charles M. Thomas	Attorney	32,500
Albert L. Mond	Attorney	15,000
William H. Walker	Expert	10,000
William H. McAdams	Expert	1,000
H. C. Weber	Expert	1,000
Charles Off	Expert (About 1922)	8,500
R. L. Nurray	Out of employ since about 1923	1,000
Willis Sims	" " " " " 1924-25	5,000
Robert T. Pollock	" " " " " 1922	5,000
J. L. Bishop	" " " " " 1922	500
Barney Davis	" " " " " 1922	500
F. H. Taylor	" " " " " 1922	500
Clara Prohaski	(Sister of a former employee, who was killed at Wood River, Illinois, while working on a Universal experimental Unit about 1919.)	5,000

[fol. 85] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER FOR TRANSMISSION OF EXHIBIT "A" AS AN ORIGINAL EXHIBIT—Filed September 1, 1936

Upon consideration of the motion filed herein by the petitioner on review praying the Court to permit the transmission to this Court, as a physical exhibit, a certain exhibit filed in the United States Board of Tax Appeals, and to dispense with the printing thereof in the record on review, and it appearing that counsel for the respondent on review

has consented to the granting of said motion, it is by the Court this 31st day of August, 1936,

Ordered that the "Purchase Agreement" filed as Exhibit A to the Stipulation of Facts before the United States Board of Tax Appeals may, by the Clerk of said Board, be transmitted to this Court as a physical exhibit on review, and its printing may be dispensed with, and the Clerk of this Court is directed to transmit a certified copy of this [fol. 86] Order to the Clerk of the United States Board of Tax Appeals.

By the Court.

Martin T. Manton, U. S. C. J.

A True Copy. (S.) Wm. Parkin, Clerk. (Seal.)

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PRÆCIPE FOR RECORD—Filed September 15, 1936

To the Clerk of the United States Board of Tax Appeals:

As required by law and the rules of the United States Circuit Court of Appeals for the Second Circuit, please prepare and within sixty days from July 27, 1936, the [fol. 87] date on which the petition for the review by said Court of the decision and order rendered by the United States Board of Tax Appeals (hereinafter referred to as the Board) in the above-entitled proceeding was filed with you and on which a copy of said petition with notice that it had been so filed was served upon the respondent in said proceeding, transmit and deliver to the Clerk of said Court copies duly certified as correct of the following documents:

1. The docket entries of the proceedings before the Board in the above-entitled proceeding.
2. The petition, together with exhibits thereto, in said proceeding for redetermination of the deficiency of income tax.
3. The answer of the respondent in said proceeding.
4. Motion to consolidate related cases for hearing.
5. Stipulation of facts and exhibits thereto introduced at the hearing.

6. Statement of evidence and exhibits thereto.

7. Memorandum findings of fact and opinion entered April 30, 1936.

8. Decision of the Board entered in its records April 30, 1936.

[fol. 88] 9. The petition for the review of said decision by the United States Circuit Court of Appeals for the Second Circuit.

10. The notice of the filing of said petition with the Clerk of the Board and the admission of the service thereof on the respondent in said proceeding.

11. Order of the Circuit Court of Appeals for the Second Circuit for transmission of Exhibit A to Stipulation of Facts as an original exhibit.

12. This præcipe for record.

13. The notice of the filing of said præcipe for record with the Clerk of the Board and the admission of the service thereof on the respondent in said proceeding.

(S.) Richard H. Wilmer, Douglas L. Hatch, Attorneys for Petitioner.

Washington, D. C., September 15, 1936.

[fol. 89] In United States Circuit Court of Appeals

[Title omitted]

Notice of Filing Præcipe—Filed September 15, 1936

To Herman Oliphant, Esq., General Counsel for the Department of the Treasury, Attorney for the Respondent, Washington, D. C.

Sir:

Please Take Notice that on the 15th day of September, 1936, the undersigned attorneys for the petitioner in the above-entitled proceeding have filed with the Clerk of the [fol. 90] United States Board of Tax Appeals the præcipe for record, of which a copy is annexed hereto.

(S.) Richard H. Wilmer, Douglas L. Hatch, Attorneys for Petitioner.

Washington, D. C., September 15, 1936.

Admission of Service

Receipt of the foregoing notice of filing of the præcipe for record and service of a copy of the præcipe therein mentioned is acknowledged this 15th day of September, 1936, and no further designation is hereby noted on respondent's behalf.

(S.) Herman Oliphant, General Counsel for the Department of the Treasury, Attorney for the Respondent.

[fol. 91] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 92] Office Copy Entered

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

ARTHUR G. BOGARDUS, Appellant,

against

GUY T. HELVERING, Commissioner of Internal Revenue, Appellee

Before L. Hand, Swan and Augustus N. Hand, Circuit Judges

Petition to review an order of the Board of Tax Appeals adjudging a taxpayer liable for a deficiency in his income tax.

William D. Whitney for the petitioner.
John J. Pringle, Jr., for the respondent.

L. HAND, Circuit Judge:

This case involves the question whether the taxpayer, Bogardus, received "compensation for personal service" under § 22 (a) of the Revenue Act of 1928, when in 1931 the Unopco Corporation paid him $10,000 in the following circumstances. He had been in the employ of the Universal Oil Products Company; how long and in what capacity the record does not disclose; his salary for the year 1930 had been $6,000 and he had received a bonus of $2,000 at the end of the year. The company had been extraordinarily successful in its business, which consisted of granting licenses under patents for methods of oil refining; its revenues, beginning in 1922, had by the end of 1930 become very large, and its assets extremely valuable. Very early in the [fol. 93] year 1931, its shareholders sold all their shares to the United Gasoline Corporation for $25,000,000, having just before withdrawn $4,100,000 from their treasury, which they transferred to a new company, organized for the purpose, and called the Unopco Corporation, whose shares they issued to themselves in the old proportions. This new company had no other assets, and its only business was to manage and invest the fund transferred. The shareholders had

no interest in the United Gasoline Company, and had of course parted with all interest in the Universal Oil Products Company. The former employees of that company remained in its employ—Bogardus among them. A few days after these transactions were completed the president of the Unopco Corporation at a meeting of shareholders declared that "during these years while we were struggling and moving forward, we had had the loyal support of a number of employees most particularly, and he thought it would be a nice and generous thing for us to show our appreciation and to remember them in the form of a gift or honorarium; * * * all of the stockholders acquiesced and were glad to do it; and the result was that it was understood that we would come forward and make these presents or gifts to these employees that were to be slated for it." The beneficiaries comprised patent attorneys, solicitors and experts—some of them not retained since 1922 or 1923—engineers and chemists; and one was the sister of an employee who had been killed by an explosion. The resolution adopted by the board of directors was that the company "pay and distribute the said sum of Six Hundred Seven Thousand Five Hundred Dollars ($607,500) as a bonus to sixty-four (64) former employees, attorneys and [fol. 94] experts of said Universal Oil Products Company, in recognition of the valuable loyal services of said employees, attorneys and experts to said Universal Oil Products Company" in such sums as the directors should decide. The Unopco Corporation made no effort to deduct these payments as an expense of its business in its income tax return, and the donees did not charge themselves with what they received. The Board has held them all liable for a tax calculated upon the payments as income, and the Circuit Court of Appeals for the First Circuit has affirmed the ruling as to one, Judge Morton dissenting, (Walker v. Helvering, 87 Fed. (2) —).

Such payments may be at once "gifts" under § 22, subdivision (b) (3), and "compensation for personal service" under subdivision (a). Subdivision b was indeed entitled "Exclusions", and since it declared that the prescribed items "shall be exempt from taxation", it would perhaps not be unnatural to assume that, but for that exemption, they would have been within subdivision (a). Nevertheless it is evident upon reflection that some of them at least could by no possibility be "gains or profits", or among any of

the specific items which that subdivision enumerated; for example, life insurance; compensation for sickness or injury; and "inheritances" as well—unless in a very remote possibility. In these cases at any rate, the "exclusions" were not exceptions from gross income, and must have been included out of abundant caution. Furthermore, subdivision (b) (3) did not exempt under all conditions the specific items which it contained; for example, though a bequest or device to executors merely for qualifying is not "compensation for personal services", (United States v. Merriam, [fol. 95] 263 U. S. 179), it becomes such, if it is conditional on performance. Ream v. Bowers, 22 F. (2) 465 (C. C. A. 2); Rose v. Grant, 39 F. (2) 338 (C. C. A. 5). And indeed in all the cases where the taxability of bonuses and the like has been mooted, the payments have been legal gifts; except as they were, the taxpayer's position would not have been even plausible. The question has been whether, though gifts, they were also "compensation for personal services"; decisions like Old Colony Trust Co. v. Commissioner of Internal Revenue, 279 U. S. 716, proved that they could be both. When the donor is not an obligor, that is, when he is under no legal sanction to make the payment, the decision must therefore depend upon his intent—perhaps more properly upon his motive—and so the courts have very generally put it. Fisher v. Commissioner, 59 F. (2) 192 (C. C. A. 2); Schumacher v. United States, 55 F. (2) 1007, 1011; Bass v. Hawley, 62 F. (2) 721 (C. C. A. 5); Botchford v. Com'r., 81 F. (2) 914 (C. C. A. 9).

We have, however, not found much help in learning what that intent or motive must be, and, while the issue remains unsettled, it seems scarcely profitable to catalogue the evidence; we rather need a test by which to determine what evidence is relevant. We agree that a man may make a gift to an old employee without meaning it as "compensation"; though probably such cases will be uncommon, especially if he declares that the payment is "in recognition of" past services. We will assume that the gift would be nothing more, if for instance the donor believed that what he had paid in the past was the full measure of anything that the employee was then "entitled to"; that in fairness [fol. 96] he did not "owe" a cent; and that anything he might give was not only beyond what the law would exact, but what the employee could in justice demand. Even so

the past services would be the cause of the gift in the sense that except for them the donor would never have been moved to spontaneous generosity, but the gift would not pay for the services. On the other hand, employers sometimes feel that their employees have never been paid in full; that their services deserved more than they have received; that the account between them is not quite in equitable balance. Such gifts are "compensation", they are not only the result of the past relation, but they are a return specifically allocated to the donee's services. For example, a patient may increase his surgeon's bill; it would be "compensation", though a gift; yet, if he made him a present only because his skill, solicitude and kindness had bound them in a warm friendship, it would not be. A donor must not be moved to satisfy some uneasiness, some scruple, some sense that there is an outstanding claim which those would recognize to whose opinion he is sensitive; something which makes the payment more than an unconstrained act of affection or regard. In determining that question, the absence of any claim for deduction in the donor's tax return is of very little significance.

In the case at bar the parties have stipulated that "the payments were not made or intended to be made by said Unopco Corporation, or any of its stockholders as * * * compensation for any services rendered * * * by any of said employees * * * to said Unopco Corporation or to any of its stockholders. All of the recipients * * * were employees * * * of said Universal Oil Products Company at the time of the payment * * * or had [fol. 97] been prior thereto". This means that the donees had not been employees of the shareholders, but it does not mean that the shareholders had not benefited by those services, as they clearly had, since nobody else could. The intent and a motive of the shareholders was necessarily that of the donor, Unopco Corporation, which could have no independent intent and motive; and that intent and motive were precisely the same as though the shareholders had been the employers of the donees, which they were not. There is therefore no real difference in this regard between this case and Fisher v. Commissioner, supra, (59 F (2) 192). Nor is there any substantial difference in the motive which actuated that gift and these; for that decision cannot stand upon the donor's self-interest except by very strained assumptions; a bonus to a retiring president would very re-

motely affect the morale of the personnel at large; or even the donee's successor. The answer here is indeed doubtful, but on the whole we should have decided with the Board, had the decision been ours. The determining considerations appear to us to have been a little like those which control an award of salvage. The salaries and bonuses which had been paid while success was in doubt were fair enough as things then stood; but the highest hopes had been finally realized, and it seemed "nice and generous" to "recognize" by sharing the prize, those "loyal services" which had contributed to make them come true. The use of the words "honorarium" and "bonus" was particularly significant; shades of intent are often best seen by such unconscious choices. "Honorarium" is a word never used except to denote a compensatory payment; it is the very type of taxable transactions of this sort; and "bonus" is only a [fol. 98] little less definite. Left to ourselves we should therefore have been disposed to say that these gifts were actuated by a sense that in fairness the donees deserved something more than they had got in the past, now that the ship had come in. But the decision is not primarily for us at all; the Commissioner had first to make his, and then the Board its own; more exactly, the taxpayer had to show the Board that the Commissioner had been wrong, and he must show us not only that the Board was wrong, but that its conclusion was beyond any reasonable inference from the evidence. We cannot go that far, whatever would have been our doubts, if we had been in its place; indeed, so impalpable are the determinants, that in such cases its conclusion will generally be final.

Nor are we embarrassed because one of the payments was to the sister of an employee who was killed in the company's service. It is quite true that the motive in that instance could not have been to compensate her for his services, but it was to compensate her for his loss nevertheless; at least it may have been. There was no inconsistency in harboring such a motive along with a desire to compensate others for their contribution to the outcome. So far as it is relevant at all, that gift tended to confirm the Board's conclusion.

Order affirmed.

[fol. 98½] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Arthur G. Bogardus v. Helvering, Com'r. Opinion, L. Hand, C. J. 3-8-37, filed.

[fol. 99] Office Copy Entered

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

ARTHUR G. BOGARDUS, Appellant,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue, Appellee

Before L. Hand, Swan and Augustus N. Hand, Circuit Judges

SWAN, C. J. (dissenting):

I cannot agree that the Board's decision, as expressed in its opinion, that the payments in question "were additional compensation in consideration of services rendered to Universal and were not tax-free gifts" is conclusively binding upon the court. The Board made no express finding that the payments were intended by Unopco or its stockholders as additional compensation for services of the recipients. Indeed, it was stipulated that "said payments were not made or intended to be made by said Unopco Corporation or any of its stockholders as payment or compensation for any services rendered or to be rendered or for any consideration given or to be given by any of said employees, attorneys or experts to said Unopco Corporation or to any of its stockholders." The evidentiary facts were undisputed, and I think the court is free to decide whether as a matter of law the payments were taxable or non-taxable. [fol. 100] See General Utilities Co. v. Helvering, 296 U. S. 200, 206; Washburn v. Commissioner, 51 F. (2d) 949, 951 (C. C. A. 8); Burnet v. Lexington Ice & Coal Co., 62 F. (2d) 906, 909 (C. C. A. 4); Commissioner v. Bonwit (C. C. A. 2), Feb. 8, 1937.

If the question is open, I am constrained to a different conclusion from that reached by my brothers. To my mind the facts indicate that the shareholders of Unopco, by reason of selling their Universal shares for such fabulous sums, were moved to an act of "spontaneous generosity", rather than actuated by a sense of moral obligation to pay for services, inadequately compensated in the past, from which they had benefited—if that distinction is to be the test be-

tween taxable and non-taxable gifts. The recipients of these payments were employees, attorneys and experts of Universal, many of whom had had no connection with that company since 1922. There is nothing to indicate that their services had not been adequately, or even generously, paid for by Universal when they were rendered, nor that any shareholder had any feeling that the accounts were not in "equitable balance" during all these years. Not until after the Universal shares had been sold and the president of Unopco suggested that it would be "a nice and generous thing" to show their appreciation in the form of a gift or honorarium was the matter of these payments ever considered. One of the recipients was the sister of an employee who had lost his life in 1919. Certainly the payment to her was purely a gift and cannot be taxed as compensation for services; yet there is nothing to indicate that the payment to her was actuated by any different motive from the payments to the others.

[fol. 101] When an employer makes a voluntary payment to his employee, it is reasonable to infer, in the absence of very special circumstances, that it is intended as additional compensation. Fisher v. Commissioner, 59 F. (2d) 192 (C. C. A. 2). When the payment is by a stranger, the natural inference is that of a gift. Lunsford v. Commissioner, 62 F. (2d) 740 (C. C. A. 6). Stockholders of a corporate employer, though legally strangers to its employees, may make gifts intended as additional compensation. Bass v. Hawley, 62 F. (2d) 721 (C. C. A. 5). There the stock of the corporate employer was owned by a holding company, which made the payment and had an interest to be served in maintaining the loyalty and good will of the employees to their corporate employer. In the present case the stockholders of Unopco can receive no possible benefit from payments to former or present employees of Universal. The decision of the majority of the court goes further than any previous authority except Walker v. Commissioner (C. C. A. 1, Feb. 12, 1937), involving the same transaction as the case at bar. I agree with Judge Morton's dissent in that case.

[fol. 101½] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Arthur G. Bogardus, Appellant, vs. Guy T. Helvering, Commissioner of Internal Revenue, Appellee. Opinion—Swan, C. J., dissenting. 3-8-37, filed.

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[fol. 115] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

ARTHUR G. BOGARDUS, Appellant,

against

GUY T. HELVERING, Commissioner of Internal Revenue, Appellee

Before L. Hand, Swan and Augustus N. Hand, Circuit Judges

On Petition for Rehearing

William D. Whitney for the petition.

Per CURIAM: Petition denied.

——, U. S. Circuit Judges.

Filed March 11, 1937.

[fol. 116] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 11th day of March, one thousand nine hundred and thirty-seven.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

ARTHUR G. BOGARDUS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

A petition for a rehearing having been filed herein by counsel for the petitioner;

Upon consideration thereof, it is ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 117] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Arthur G. Bogardus vs. Commis-

sioner of Internal Revenue. Order. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 11, 1937. William Parkin, Clerk.

[fol. 118] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House in the City of New York, on the 15th day of March one thousand nine hundred and thirty seven.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

ARTHUR G. BOGARDUS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 119] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Arthur G. Bogardus vs. Commissioner of Internal Revenue. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 15, 1937. William Parkin, Clerk.

[fol. 120] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 119, inclusive, contain

a true and complete transcript of the record and proceedings had in said Court, in the case of Arthur G. Bogardus, Petitioner, against Commissioner of Internal Revenue, Respondent, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of March, in the year of our Lord one thousand nine hundred and thirty-seven, and of the Independence of the said United States the one hundred and sixty-first.

Wm. Parkin, Clerk. (Seal, United States Circuit Court of Appeals, Second Circuit.)

[fol. 121] Supreme Court of the United States

Order Allowing Certiorari—Filed April 26, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,370. U. S. Circuit Court of Appeals, Second Circuit. Term No. 830. Arthur G. Bogardus, petitioner, vs. Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed March 20, 1937. Term No. 830, O. T., 1936.